

American University in Cairo

## AUC Knowledge Fountain

---

Theses and Dissertations

---

6-1-2013

### The responsibility to protect and the Uniting for Peace Resolution

Dina Youssef Elsharkawy

Follow this and additional works at: <https://fount.aucegypt.edu/etds>

---

#### Recommended Citation

##### APA Citation

Elsharkawy, D. (2013). *The responsibility to protect and the Uniting for Peace Resolution* [Master's thesis, the American University in Cairo]. AUC Knowledge Fountain.

<https://fount.aucegypt.edu/etds/982>

##### MLA Citation

Elsharkawy, Dina Youssef. *The responsibility to protect and the Uniting for Peace Resolution*. 2013. American University in Cairo, Master's thesis. *AUC Knowledge Fountain*.

<https://fount.aucegypt.edu/etds/982>

This Thesis is brought to you for free and open access by AUC Knowledge Fountain. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of AUC Knowledge Fountain. For more information, please contact [mark.muehlhaeusler@aucegypt.edu](mailto:mark.muehlhaeusler@aucegypt.edu).

**The American University in Cairo**

**School of Global Affairs and Public Policy**

**THE RESPONSIBILITY TO PROTECT AND THE  
UNITING FOR PEACE RESOLUTION**

**A Thesis submitted to**

**Department of Law**

**in partial fulfilment of the requirements  
for the degree of  
Master of Arts in International Human Rights Law**

**By**

**Dina Youssef Elsharkawy**

**February 2013**

The American University in Cairo  
School of Global Affairs and Public Policy

THE RESPONSIBILITY TO PROTECT AND THE UNITING FOR PEACE  
RESOLUTION

A Thesis submitted by  
*Dina Youssef Elsharkawy*  
to the Department of Law

February 2013

in partial fulfillment of the requirements  
for the degree of  
Master of Arts in International Human Rights Law  
has been approved by

Professor Hani Sayed \_\_\_\_\_  
Thesis Adviser  
American University in Cairo  
Date \_\_\_\_\_

Professor Jason Beckett \_\_\_\_\_  
Thesis First Reader  
American University in Cairo  
Date \_\_\_\_\_

Professor Thomas Skouteris \_\_\_\_\_  
Thesis Second Reader  
American University in Cairo  
Date \_\_\_\_\_

Professor Thomas Skouteris \_\_\_\_\_  
Law Department Chair  
Date \_\_\_\_\_

Ambassador Nabil Fahmy \_\_\_\_\_  
Dean of GAPP  
Date \_\_\_\_\_

The American University in Cairo  
School of Global Affairs and Public Policy  
Department of Law

THE RESPONSIBILITY TO PROTECT AND THE UNITING FOR PEACE  
RESOLUTION  
Dina Youssef Elsharkawy

Supervised by Professor Hani Sayed

ABSTRACT

The Rwanda genocide during the 1990s showed the failure of the international community to prevent mass atrocities and save civilians' lives. The current movement toward advancing the Responsibility to Protect Resolution has grown out of recognition of the global community's insufficient response to the 20<sup>th</sup> century mass atrocities. As a result the concept of R2P was born during that time in order to save people from crimes against humanity and genocide. However, since the 1990s until today crimes and violence against civilians continue to occur. For example, the situation in several Arab countries and the attacks against civilians such as Libya and Syria lead us to question concepts such as the responsibility to protect and humanitarian intervention. This thesis explores the concept of R2P within the UN system. This paper argues that R2P resolution should be done within the UN as it is an international organization which should have the authority to apply the concept of R2P. The problem is that within the UN Security Council the five permanent members maintain undue control because of their veto power. All countries in the UN should participate in deciding whether it is urgent and useful to intervene in a country to save its civilians or not. The thesis mainly evaluates the Uniting for Peace Resolution as a way to overcome the 5 Permanent members veto power.

## TABLE OF CONTENTS

I. Introduction.....	1
II. Evolution of the concept of R2P within the UN .....	5
A. Definition of R2P.....	5
B. Phase one: beginning of R2P concept 1990s 2000.....	10
C. Phase two: International community and R2P 2001-2004.....	12
D. Phase three: legal framework of R2P 2005-2012.....	16
III. UN Charter and R2P.....	20
A. Use of force in the UN charter and R2P.....	20
1. The legality of use of force according to the UN Charter .....	20
2. Legality of R2P according to the ICSS report and General Assembly World Summit 2005.....	27
B. UN and regional organizations .....	29
IV. The Uniting for Peace Resolution.....	33
A. The relation between the General Assembly and the Security Council...	37
B. Uniting for Peace.....	38
1. Historical background.....	39
a. The role of UN in the decolonization world.....	39
b. The beginning of the uniting for peace resolution.....	40
2. The Suez Canal and the Uniting for Peace Resolution .....	41
3. Debate regarding the General Assembly resolution 377 .....	42
a. Debate about the possibility for the UNGA to substitute the UNSC and issue the Uniting for Peace Resolution.....	42
b. Legality of the Uniting for Peace Resolution within the UN Charter.....	45
c. Conditions that must be fulfilled before the General Assembly can proceed and issue Uniting for Peace Resolution.....	47
d. The General Assembly in Peacekeeping.....	48
e. the Uniting for peace in practice.....	52
4. The future of the Uniting for peace and the concept of R2P.....	58
V. Conclusion.....	60

## I. Introduction

The Rwanda genocide showed the failure of the international community to save civilians. The Secretary General Kofi Annan said that “the international community failed Rwanda and that must leave us always with a sense of bitter regret.”<sup>1</sup> From April to July 1994, members of the Hutu ethnic majority in the east-central African nation of Rwanda murdered as many as 800,000 people, mostly of the Tutsi minority.<sup>2</sup> It was the culmination of longstanding ethnic competition and tensions between the minority Tutsi who had controlled power for centuries, and the majority Hutu peoples, who had come to power in the rebellion of 1959–62 and overthrew the Tutsi monarchy.<sup>3</sup> In 2000, the UN explicitly declared its reaction to Rwanda a failure.<sup>4</sup> The concept of R2P was born during that time in order to save people from crimes against humanity and genocide. This was considered a tool in order to intervene to save civilians. However, since the 1990s until today several crimes and violence against civilians continue to occur. The issue is that the international community has a responsibility to stop such violence which should be done within the United Nations as the universal organization with 193 members.

Recently the Middle East is facing many changes starting with the revolution in Tunisia, Egypt and then in Libya. In Libya following widespread and systematic attacks against the civilian population by the regime in the Libya, the UN Security Council, on 26 February 2011, unanimously adopted resolution 1970, making explicit reference to the responsibility to protect deploring what it called “the gross and systematic violation of human rights in strife-torn Libya,”<sup>5</sup> the Security Council demanded an end to the violence, recalling the Libyan authorities’ responsibility to protect its population, and imposed a series of international sanctions.<sup>6</sup> The Council also decided to refer the situation to the International Criminal Court. In resolution 1973, adopted on 17 March

---

<sup>1</sup> UN chief’s Rwanda genocide regret, *available at* <http://news.bbc.co.uk/2/hi/africa/3573229.stm> (26 March, 2004)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Rwanda: How the genocide happened, *available at* <http://www.bbc.co.uk/news/world-africa-13431486>

<sup>5</sup> Background Information on the Responsibility to Protect, *available at* <http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>

<sup>6</sup> *Id.*

2011,<sup>7</sup> the Security Council demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians, which it said might constitute crimes against humanity. The Council authorized Member States to take all necessary measures to protect civilians under threat of attack in the country, while excluding a foreign occupation force of any form on any part of Libyan territory. Also in Africa in response to the escalating, post-election violence against the population of Côte d'Ivoire in late 2010 and early 2011, the UN Security Council, on 30 March 2011,<sup>8</sup> unanimously adopted resolution 1975 condemning the gross human rights violations committed by supporters of both ex-President Laurent Gbagbo and President Ouattara.<sup>9</sup> The resolution cited the primary responsibility of each State to protect civilians, called for the immediate transfer of power to President Ouattara, and reaffirmed that the UN operation in Cote d' Ivoire ("UNOCI") could use all necessary means to protect life and property.<sup>10</sup> In order to protect the people of Côte d'Ivoire from further atrocities, UNOCI on 4 April 2011 began a military operation, and President Gbagbo's hold on power ended on 11 April when he was arrested by President Ouattara's forces after days of fighting with UNOCI and the French military.<sup>11</sup>

These crises lead us to think about the concept of R2P and its application in order to protect the civilians. The UN's main purpose is to maintain peace and security and R2P is a tool to reach this goal. This paper argues that R2P should be done within the UN system but not only within the Security Council because of the veto power. The problem is that the UN's enforcement system and in particularly within the Security Council does not represent all countries of the UN. The five permanent members (France, United States, United Kingdom, Russia and China) through their veto can decide whether to pass a resolution concerning the right to intervene in a country or not.

The General Assembly Uniting for Peace Resolution while offering a means to get around this veto power is still problematic because it is not binding.

---

<sup>7</sup>United Nations Security Council Resolution 1973, SC/10200 ( march 2011)

<sup>8</sup> United Nations Security Council Resolution 1975, S/RES/1975 ( march 2011)

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

There are debates concerning the necessity of R2P, on one hand some think that it is useful in order to save the live of the civilians, for example, in the article The Responsibility to Protect Human Rights David Miller, stated that:

R2P is the responsibility of the international community and that the protection of human rights is one of the main aims of global governance. It is one of the main reasons for thinking that governance must exist on a global and not merely a national level. When states are unable to protect the human rights of their citizens, or indeed are actively involved in violating those rights on a significant scale, then 'the world community' has a responsibility to step in and ensure that these rights are protected.<sup>12</sup>

Also Mehrdad Payandeh stated that:

The concept of the responsibility to protect constitutes an attempt to change the prefix of the ongoing debate about the legality and legitimacy of humanitarian intervention. 2 At the core of the concept lies a two-dimensional understanding of responsibility: (1) the responsibility of a state to protect its citizens from atrocities, and (2) the responsibility of the international community to prevent and react to massive human rights violations.<sup>13</sup>

On the other hand, some scholars consider it as a form of colonialism. For example, William Engdahl mentions in the article Humanitarian Neo-colonialism: Framing Libya and Reframing War that:

The most remarkable facet of NATO's war against Libya is the fact that world opinion, that ever so nebulous thing, has accepted an act of overt military aggression against a sovereign country guilty of no violation of the UN Charter in an act of de facto neo-colonialism, a 'humanitarian' war in violation of basic precepts of the laws of nations<sup>14</sup>

This paper does not analyze whether R2P is good or bad. However, this paper argues that the R2P resolution should be done within the UN as an international organization which should have the authority to apply the concept of R2P.

---

<sup>12</sup> David Miller, The Responsibility to Protect Human Rights 1 ( February 2006)  
[http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session6\\_Miller.pdf](http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session6_Miller.pdf)

<sup>13</sup> Mehrdad Payandeh, With Great Power Comes Great Responsibility? The Concept of the Responsibility To Protect Within the Process of International Lawmaking 470 ( 2010), <http://www.yjil.org/print/volume>

<sup>14</sup> F. William Engdahl, *Humanitarian Neo-colonialism: Framing Libya and Reframing War* ( may 2011) available at <http://www.globalresearch.ca/index.php?context=va&aid=24617>



Part I of the thesis describes the evolution of the R2P concept. Part II explains the legality of the R2P concept within the UN Charter with a focus on the authority of the Security Council to issue resolution as part of its main purpose which is to maintain peace and security. Part III evaluates the role of the General Assembly to maintain peace and security. It evaluates in details the Uniting for Peace Resolution as a solution to alternative the Security Councils veto power control.

## II. Evolution of the concept of R2P within the UN

### A. Definition of R2P

In this section I will clarify the meaning of responsibility to protect. The concept of R2P has many sources: the rise of international humanitarian law starting with the late nineteenth century and accelerating in the period after World War II and the growing willingness of the UN Security Council, since the end of the Cold War, to authorize forceful and sometimes coercive actions inside refractory or weak states.<sup>15</sup> The concept of R2P came a result of the international community's feeling of a duty to protect civilians, in particular, against crimes such as genocide and this should be done within the framework of the UN.<sup>16</sup> The Responsibility to Protect (R2P) is an international security and human rights doctrine which includes several important principles:

1. The primary responsibility for the protection of populations lies with the state. This is recognition that sovereignty includes not just rights, but responsibilities;
2. When governments are unable or unwilling to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing, the international community has a responsibility to take action;
3. The international community's responsibility is a continuum of measures including prevention, reaction to violence, if necessary, and rebuilding shattered societies.
4. The international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes. If a State fails to protect its populations or is in fact the perpetrator of crimes, the international community must be prepared to take stronger measures, including the collective use of force through the UN Security Council.<sup>17</sup>

It is clear from this definition that under R2P state sovereignty is not absolute. The international community has a responsibility to intervene when governments fail to protect its populations from genocide, ethnic cleansing, war crimes, or crimes against

---

<sup>15</sup> Parliamentary hearing at the United Nations, 2 (20-21 November 2008) ,<http://www.ipu.org/splz-e/unga08/s4.pdf>

<sup>16</sup> Gareth Evans and Mohamed Sahnoun, The Responsibility to Protect 3 ( Nov. - Dec., 2002), <http://faculty.maxwell.syr.edu/rdenever/PPA-730-00/Evans.pdf>

<sup>17</sup> Hugh Breakey, *The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis*, available at [http://www.academia.edu/1213148/Review\\_and\\_Analysis\\_2012\\_Responsibility\\_to\\_Protect\\_and\\_the\\_Protection\\_of\\_civilians\\_in\\_Armed\\_Conflict](http://www.academia.edu/1213148/Review_and_Analysis_2012_Responsibility_to_Protect_and_the_Protection_of_civilians_in_Armed_Conflict)

humanity. The concept of humanitarian intervention and then R2P was created as a result of the inability of the international community to intervene to save people as a result of massive violence. The dilemma was to have a way to balance between the right of state sovereignty which is mentioned in the UN charter and the main role of the UN which is to protect human rights. Each country which signed the UN Charter has agreed to realize these principles. The issue was to find a way to balance between these principles. This was found with the birth of the concept of humanitarian intervention and then R2P.

The UN was established on 24 October 1945 by 51 countries seeking to establish a new basis for international relations and avoid the horrors of the two World Wars. The preamble of the charter stated that one of the main aims of the UN is to protect human rights:

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small<sup>18</sup>

Article 1 (3) mentions on of the purposes of the UN charter “ promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>19</sup> In the meantime the charter in Article 2 (1) specifies that the organization is based on the principle of the sovereign equality of all its Members and Article 2(7) of the UN Charter: “nothing should authorize intervention in matters essentially within the domestic jurisdiction of any State.”<sup>20</sup> The aim at that time was to avoid another world war. The pursuit of human rights was a central reason for creating the UN. World War II atrocities and genocide led to a ready consensus that the new organization must work to prevent any similar tragedies in the future. An early objective was creating a legal framework for considering and acting on complaints about human rights violations. The UN Charter obliges all member nations to promote "universal

---

<sup>18</sup> Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

respect for, and observance of, human rights" and to take "joint and separate action" to that end.<sup>21</sup>

The Universal Declaration of Human Rights was adopted by the General Assembly in 1948. Its first article mentions that "All human beings are born free and equal in dignity and rights."<sup>22</sup> In addition to the Universal Declaration of Human Rights the Geneva Conventions of 1949 and the two Additional Protocols of 1977 are considered the cornerstones of international humanitarian law (IHL). Unlike Human Rights Law, which applies both during peacetime and wartime, IHL applies only in wartime. International human rights law and international humanitarian law both attempts to protect the lives, dignity and health of individuals but from different perspectives. Both aim to protect human life, prohibit torture, prohibit discrimination, and provision for the protection of women and children.<sup>23</sup> IHL deals with hostilities, combatant and prisoner of war status and the protection of the Red Cross and Red Crescent emblems. IHRL is concerned with the freedom of press of expression and right to assembly.<sup>24</sup>

The concept of humanitarian intervention was not legitimate during the Cold War. Unlike conflicts during the Cold War; the level of violence directed at civilians during the post cold war has been unprecedented. For example, while soldiers constituted the highest percentage of casualties in both the First and Second World Wars, approximately 70% of the victims in the post-Cold War era have been civilians.<sup>25</sup> In addition, while conflicts before and during the Cold War were mostly inter-state, nearly 80% of the wars that erupted in the 1990s have been intra-state.<sup>26</sup> The concept of humanitarian intervention was not a legitimate practice during the Cold War because states placed more value on sovereignty. However, there was a significant shift of attitudes during the 1990s as the

---

<sup>21</sup> *Id.*

<sup>22</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>23</sup> *Id.*

<sup>24</sup> International Humanitarian Law and International Human Rights Law Similarities and differences 2, [http://www.ehl.icrc.org/images/resources/pdf/ihl\\_and\\_ihrl.pdf](http://www.ehl.icrc.org/images/resources/pdf/ihl_and_ihrl.pdf)

<sup>25</sup> Era Alhaji, The Intervention Dilemma The Dynamics of Civilian Protection in the post-Cold War 22, <http://www.iss.co.za/pubs/Books/TortuousRoad/Chap2.pdf>

<sup>26</sup> *Id.*

world started witnessing gross violations of human rights at a scale that was not seen since the Second World War. In some cases, as with Rwanda, intervention was too late and too weak to prevent a humanitarian crisis. The 20<sup>th</sup> century was marked by some of the worst atrocities committed by human beings such as the genocide in Rwanda, crimes against humanity and gross violations of human rights. These events raise the question of the responsibility of the international community once states are not able or not willing to protect their own populations.<sup>27</sup> As a result the international community felt the importance of humanitarian intervention and at that time the concept of R2P was born which mentions that state sovereignty is not only a privilege but also a responsibility.

<sup>28</sup>The first definition of the Responsibility to Protect was developed under the lead of the International Commission on Intervention and State Sovereignty (ICISS), in the December 2001 The Responsibility to Protect report, by the Canadian International Development Research Centre. <sup>29</sup>Two key principles were defined as being fundamental to the concept of responsibility: the first is that state sovereignty implies responsibility, and the primary responsibility for the protection of a people lies with the state itself; the second is that, where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. <sup>30</sup> Taking this definition into consideration and looking at the UN Charter we can conclude that state sovereignty is not absolute because in cases where there is massive violence in a country the international community has a responsibility to intervene and help people. If a state were to fail to protect its citizens, it means that the state failed to fulfill this responsibility. Looking at the definition these principles in the 2001 report, it is obvious that the aim behind their formulation was to provide a new definition of the concept of sovereignty, in an attempt to guide it in a new direction, focusing on the notion of sovereignty as responsibility. <sup>31</sup>

---

<sup>27</sup>*Id.*, at 26

<sup>28</sup>*Id.*

<sup>29</sup> Protecting the Responsibility to Protect, (Spring 2009), <http://crisismapper.wordpress.com/papers-articles/protecting-the-responsibility-to-protect/>

<sup>30</sup>*Id.*

<sup>31</sup>*Id.*

Later on in 2005, the discussion focused more on the supposed broader concept of protecting those in danger. This was clearly observed at the 2005 World Summit, “Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>32</sup> Furthermore, member states also showed their commitment by accepting that responsibility, pledging to act in accordance. “The international community should, as appropriate, encourage and help states to exercise this responsibility, and support the United Nations in establishing an early warning capability.”<sup>33</sup> The resulting documents referred to the responsibility of the international community in using “appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>34</sup> Finally, the international community gave further commitment to supporting states, “Building the necessary capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and to assist those which are under stress before crises and conflicts break out.”<sup>35</sup> This report identifies in details and supports the importance of R2P and its necessity in order to protect civilians.

The effort of explaining the importance of R2P did not end in 2005, as recently, in January 2009 Secretary-General Ban ki-Moon released a report entitled implementing the responsibility to protect. This report the UN Secretary-General Ban Ki-moon described R2P’s three conceptual “pillars.” First, each state has the “enduring responsibility to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.”<sup>36</sup> Second, the international community has the responsibility to assist states in meeting their obligations under the first pillar. Third, if a state “manifestly fails” to protect its people, then the international community has the responsibility to respond “in a timely and decisive

---

<sup>32</sup> Implementing the responsibility to protect report of the Secretary-General, G.A. 63 Sess., UN Doc. A/63/677 (2009)

<sup>33</sup> Protecting the Responsibility to Protect, (Spring 2009), <http://crisismapper.wordpress.com/papers-articles/protecting-the-responsibility-to-protect/>

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Implementing the responsibility to protect report of the Secretary-General, G.A. 63 Sess., UN Doc. A/63/677 (2009)

manner, using Chapters VI, VII, and VIII of the UN Charter,” and by taking a range of peaceful or forceful measures.<sup>37</sup>

All these reports refer to the same idea which is the creation of a different understanding of state sovereignty. They all mention that state sovereignty is not absolute and that the international community has the responsibility to protect. The UN as an international organization is responsible for achieving its aim which is to protect human rights.

The following section is explaining in details the evolution of the concept of R2P starting from the 90s until now.

### **B. phase one: beginning of R2P concept 1990s- 2000**

Phase one which began in 1990 and continued until 2000 marked the beginning of the sense of the responsibility toward civilians suffering from mass atrocities. The end of the 20th century marked a change in the nature of armed conflict from large inter-state wars to violent internal conflicts. The genocides in Cambodia, Rwanda, and Bosnia demonstrated massive failures by the international community to prevent mass atrocities as many civilians were victims of such violence.<sup>38</sup> As a result of that near the end of the 1990s it was necessary to shift the debate about crisis prevention and response. This meant that the security of the community and the individual and not only the state, must be priorities for national and international policies. As a result of this sentiment the real start of the concept of R2P was during the 1990s following profound sense of fear at the failure of the international community to act effectively in Somalia, Rwanda, and Bosnia. All this created the sense and the need for a broadly accepted new norm to guide the international response to atrocities.<sup>39</sup> In addition, this need became vital in 1999 with the NATO bombing to end ethnic cleansing in Kosovo, which began after the situation had

---

<sup>37</sup> *Id.*

<sup>38</sup> Adèle Brown, *Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?* (June 2008), available at <http://www.parliament.uk/briefing-papers/RP08-55>

<sup>39</sup> *Id.*

been deadlocked in the Security Council: even many who considered the intervention morally legitimate were troubled by its illegality under international law.<sup>40</sup>

These violent events which occurred during the 1990s led to a debate among members of the international community. The United Nations was deeply divided between those who insisted on a right of humanitarian intervention and those who viewed such a doctrine as an indefensible infringement of state sovereignty.<sup>41</sup> The international community felt that something was really needed to end such crises but the way to get out or to help the people suffering from such violation was not clear. The concept of humanitarian intervention was not a legitimate practice during the Cold War because states placed more value on sovereignty.<sup>42</sup> However, there was a significant shift of attitudes during the 1990s, which led the way in pressing new humanitarian claims within international society. The UN Secretary-General noted the extent of this change in a speech to the General Assembly in September 1999. Kofi Annan declared that “there was a developing international norm to forcibly protect civilians who were at risk from genocide and mass killing, but still not everyone was convinced about the legality of humanitarian intervention.”<sup>43</sup>

Humanitarian intervention was seen by the international community as a dangerous and a way to intervene in the internal affairs of countries. Many issues were raised by the international community such as the legal justification for military action without Security Council, the moral or humanitarian justification for the action, and the way in which the NATO allies conducted the operation.<sup>44</sup> During that time, Secretary-General Kofi Annan warned that the UN risked discrediting itself if it failed to respond to catastrophes such as Rwanda and Srebrenica, and he challenged member states to agree on a framework for action.<sup>45</sup> The Secretary General at that time only challenged member states to have a framework, this way of evaluating the situation marked in my point of

---

<sup>40</sup> *Id.*

<sup>41</sup> Report of the International Commission on Intervention and State Sovereignty 2 ( December 2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

<sup>42</sup> *Id.*

<sup>43</sup> Secretary General Annual report to the General Assembly , SG/SM/7136 GA/9596 ( 1999)

<sup>44</sup> ICISS report *supra* note 41, at VII

<sup>45</sup> *Id.*



view the first phase of the evolution of R2P, the Secretary General stated that “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica to gross and systematic violations of human rights that affect every precept of our common humanity.”<sup>46</sup> Since the beginning of the 1990s until 2001 the concept of R2P was not really clear. The issue during that time was only marked by debates about the way to have a framework of actions but nothing more than that. The idea of humanitarian intervention was seen at that time necessary and the Secretary General mentioned that in several speeches but the issue needed a legal justification for intervention. The issue was that it was important to have a legal way to permit intervention and to balance between humanitarian intervention and sovereignty. This was a real challenge during that time and it was in response to this challenge that the Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS):

Our Commission was asked to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.<sup>47</sup>

### **C. Phase two: International community and R2P 2001-2004**

The second phase of R2P began in 2001, the international community started to feel the importance of the implementation of R2P as a result several reports were issued in order to clarify this concept. In 2001 the principle of the responsibility to protect was first elaborated by a group of prominent international human rights leaders comprising the International Commission on Intervention and State Sovereignty.<sup>48</sup> The ICISS was formed under the sponsorship of the Government of Canada with the goal of developing global political consensus about how and when the international community should respond to emerging crises involving the potential for large-scale loss of life and other

---

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

widespread crimes against humanity.<sup>49</sup> This report formulated the alternative principle of the responsibility to protect, focusing not on the right of outsiders to intervene but on the responsibility of all states to protect people at risk.<sup>50</sup>

The report elaborated the meaning of the concept of R2P as it shows the responsibility of all states to save the life of people suffering from great violence. The international community stated the responsibility to address massive violations of humanitarian norms and ensuring respect for the sovereign rights of nation states. The commission was led by Gareth Evans, former Foreign Minister of Australia, and Mohamed Sahnoun, Special Advisor to the UN Secretary-General. Focusing on the right of humanitarian intervention, this report examined when if ever it is appropriate for states to take coercive and in particular military action, against another state for the purpose of protecting populations at risk.<sup>51</sup> In essence, the group concluded that when a group (or groups) of people is suffering from acts of violence resulting from internal war, insurgency, repression or state failure, and the state where these crimes are taking place is unable or unwilling to act to prevent or protect its peoples, the international community has a moral duty to intervene to bring to an end these atrocities.<sup>52</sup>

The central theme of the report is that those sovereign states have a responsibility to protect their own citizens, and when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.<sup>53</sup> The report generates a new international consensus on these issues. The main aim at that stage was mainly to have the feeling of the responsibility to intervene.<sup>54</sup> The issue at that time was to encourage the world to participate in such action whenever the UN considers its necessity. The ICISS outlined the “just cause threshold”, which needs to be present in order to justify military intervention for the purpose of human protection.<sup>55</sup> An additional volume was compiled to the report, the responsibility to protect: research, bibliography,

---

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*, at VIII

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 2-5

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, at XII

background. It was added in order to clarify the objectives of the report. The UN Secretary General Kofi-Annan at the launch of the Commission's report on February 15 2002 clarified the objective of R2P during that time. He explained that the report is trying to encourage countries to participate in this kind of intervention to protect people. Also he stated that it is very important to draw the line between the idea of sovereignty and the duty to save the live of people suffering from violence:

I sought to develop the idea of two notions of sovereignty: one for States, another for individuals. This idea was rooted firmly in the UN Charter, which affirms the sovereignty of States even as it challenges us to save succeeding generations from the scourge of war . . . How to protect individual lives while maintaining and even strengthening the sovereignty of States has become clearer with the publication of this report. You are taking away the last excuses of the international community for doing nothing when doing something can save lives.<sup>56</sup>

However, the support for R2P was still limited after the release of the ICISS report. As ongoing humanitarian disasters, including the failure to protect the people of Darfur, signaled that more needed to be done by the international community as a whole to respond to genocide and other threats against populations.<sup>57</sup> The UN believed that it was still necessary to issue more reports in order to implement the principle of R2P. In particular after the Iraqi invasion in 2003 the illegal US invasion of Iraq highlighted the importance of the matters and it was essential to stress on the concept of R2P.<sup>58</sup> In September 2003, the Secretary-General called for Member States to strengthen the UN to better advance development, security, and the protection of human rights. In recognition of the urgent need to address the UN failures to respond to genocide, the Secretary-General challenged Member States to include protection from genocide as part of this UN reform agenda.<sup>59</sup>

As a result of that the responsibility to protect doctrine received renewed emphasis in 2004 when the United Nations Secretary-General Kofi Annan created the High-Level

---

<sup>56</sup> SECRETARY-GENERAL ADDRESSES INTERNATIONAL PEACE ACADEMY SEMINAR ON 'THE RESPONSIBILITY TO PROTECT', SG/SM/8125, (2002)

<sup>57</sup> *Id.*

<sup>58</sup> Jentleson Duke, *Humanitarian Intervention and Sovereignty Delegation: Why? When? Who Decides? How Much?* (March 2006), available at <http://www.law.duke.edu/publiclaw/pdf/workshop06sp/jentleson>

<sup>59</sup> *Id.*

Panel on Threats, Challenges, and Change. The Panel was established to give more details concerning the new principle. It identifies major threats facing the international community in the broad field of peace and security and generated new ideas about policies and institutions aimed at preventing or confronting these challenges.<sup>60</sup> It is clear that the panel's purpose was to address the importance of R2P in maintaining peace and security which is the aim of the UN as it is mentioned in the UN Charter. After a year of deliberations, in December 2004 the panel issued its findings in a report entitled *A More Secure World: Our Shared Responsibility*.<sup>61</sup> The report provided a new assessment of the numerous challenges ahead for peaceful interstate relations and made recommendations of the necessity of these challenges to be met effectively through collective action. The Panel endorsed this emerging norm, stating that:

There is a growing recognition that the issue is not the right to intervene of any State, but the responsibility to protect of every State when it comes to people suffering from avoidable catastrophe mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. . . We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.<sup>62</sup>

The report refers to the notion of collective responsibility in order to highlight the importance of R2P and humanitarian intervention. The Secretary-General of the United Nations Kofi A. Annan mentioned in his statement the importance of the principle of R2P and he used the world's urgent need to apply R2P and the necessity to maintain peace and security:

I hope people all over the world will read this report, discuss it, and urge their Governments to take prompt decisions on its recommendations. I believe the great majority of them will share my feeling that there is an urgent need for the nations of the world to come together and reach a new consensus - both on the future of collective security and on the changes needed if the United Nations is to play its part. For my part, I will move quickly to consider and implement, as appropriate,

---

<sup>60</sup> Report of the High-level Panel on Threats, Challenges and Change *A more secure world: Our shared responsibility* ( 2004), <http://www.un.org/secureworld/report2.pdf>

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at, paras 201 and 203

those recommendations that are within my purview. I urge the other organs of the United Nations to do the same.<sup>63</sup>

#### **D. Phase three: legal framework of R2P 2005-2012**

Phase three which began in 2005 is characterized by the formation the legal framework of R2P. In September 2005, R2P was once again cheered up this time with the full support of the international community.<sup>64</sup> This year marked a new phase of the evolution of R2P as it marked the emergence of the legal framework. In 2005 at the 60th session of the U.N. General Assembly gathering, 191 heads of state and government representatives unanimously endorsed a resolution supporting the Responsibility to protect doctrine.<sup>65</sup> This was the first time a resolution was issued concerning R2P. This resolution laid the foundations for a new global moral compact between every State and every population on earth. As adopted, atrocity crimes, genocide, crimes against humanity including ethnic cleansing and war crimes - were considered a universal concern and therefore were the responsibility of the international community.<sup>66</sup>

At the World Summit in 2005 the member states included R2P in the Outcome Document. The next year, in April 2006, the UN Security Council formalized their support of the R2P by reaffirming the provisions of the paragraphs from the World Summit document.<sup>67</sup> In paragraph 138-139 of the World Summit document, Heads of State and government agreed to the following:

That each individual state has the primary responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing. And it is also a responsibility for prevention of these crimes. Furthermore, the international community should encourage or assist states to exercise this responsibility and that the international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations threatened by these crimes. When a state manifestly fails in its protection responsibilities, and peaceful means are inadequate, the international

---

<sup>63</sup> *Id.*, at iX

<sup>64</sup> *Id.*

<sup>65</sup> UN General-Assembly 2005 Summit Outcome Discussion, A/60/PV.8, 16 September, 2005

<sup>66</sup> *Id.*

<sup>67</sup> UN Security Council Resolution 1674: Protection of Civilians in Armed Conflict , S/RES/1674, 28 April 2006

community must take stronger measures, including collective use of force authorized by the Security Council under Chapter VII.<sup>68</sup>

In paragraph 138 and 139 of the General Assembly resolution the right to intervene under the principle of R2P is to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>69</sup> The resolution provides a clear image of R2P and its legality according to the UN Charter. This resolution marked a difference in the evolution of R2P as it gives this concept a legal meaning. According to this resolution R2P should be executed only through the UN which has the right to issue resolutions to intervene in a state whenever there is a threat to international peace and security.<sup>70</sup>

As R2P is considered part of human security the World Summit outcome refers to the concept of human security. According to paragraph 143 the purpose of human security is to enable all individuals to be free from fear and want, and to enjoy all their rights and fully develop their human potential.<sup>71</sup> In the meantime, the Responsibility to protect focuses on protecting populations from specific cases of genocide, war crimes, ethnic cleaning and crimes against humanity. Such cases result in large and complex humanitarian crises that are costly in terms of human lives, loss of social capital and financial resources, and are more difficult to resolve later.<sup>72</sup> It is clear that both concepts are related but human security is much larger in scope, covering many more concerns. Human security includes the protection of people from severe and prevalent threats, and situations.<sup>73</sup> The issues Human Security addresses include, but are not limited to, the following: organized crime and criminal violence, human rights and good governance, armed conflict and intervention, genocide and mass crimes, health and development and resources and environment.<sup>74</sup>

Following the General Assembly World Summit, the U.N. Security Council unanimously adopted Resolution 1674 on the Protection of Civilians in Armed Conflict

---

<sup>68</sup> UN General-Assembly 2005 Summit Outcome Discussion, A/60/PV.8, 16 September, 2005

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

on 28 April 2006. Resolution 1674 contains the first official Security Council reference to the Responsibility to protect as it reaffirms the provisions of paragraph 138 and 139 of the World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>75</sup> Then in Resolution 1706 31 August 2006<sup>76</sup>, which sought to provide a peacekeeping mission to Darfur, the Council once again recognized the importance of R2P and re-asserted its commitment to the principles of this doctrine.<sup>77</sup> This was the first time R2P was applied within the framework of the UN and with the Security Council resolution. In September 2006, the UN Security Council had their first meeting on the situation in Burma and in January 2007 proposed a resolution calling for the cessation of grave violations of human rights. However, China and Russia both used their veto to block this resolution claiming that the internal affairs of a state did not belong in the Security Council and that the situation did not constitute threats to international peace and security.<sup>78</sup>

The effort of the Secretary General to emphasize the importance of the implementations of R2P within the UN is still in process and this is clear in several reports were issued. Recently, in January 2009, Secretary-General Ban ki-Moon released a report entitled *implementing the Responsibility to Protect* the first comprehensive UN document on the R2P. The report clarifies how to understand R2P and outlines measures and actors involved in rendering the norm operational.

Based on paragraph 138-139 of the World Summit, the Secretary-General suggested a three-pillar approach namely 1) the protection responsibilities of the state, 2) international assistance and capacity building, and 3) timely and decisive response to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity.<sup>79</sup>

---

<sup>75</sup> UN Security Council Resolution 1674: Protection of Civilians in Armed Conflict , S/RES/1674, 28 April 2006

<sup>76</sup> UN Security Council Resolution 1706: Reports of the Secretary-General on the Sudan , S/RES/1706, 31 August 2006

<sup>77</sup> *Id.*

<sup>78</sup> UN General Assembly resolution Situation of human rights in Myanmar , A/RES/61/232, ( march 2007)

<sup>79</sup> Implementing the responsibility to protect Report of the Secretary-General, GA A/63/677 ( January 2009)

Moreover, another report was issued in 2010 by the Secretary-General entitled *on early warning, assessment and the responsibility to protect* it identified gaps and proposed ways to improve the UN's ability to use early warnings more effectively, including information from field operations and improvements to early, flexible and balanced responses where there is risk of genocide, crimes against humanity, war crimes or ethnic cleansing.<sup>80</sup>

Moreover, in 2011 the UN General Assembly held an informal interactive dialogue on the Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect. The report by the Secretary-General emphasized the need for effective global-regional collaboration to help implement the responsibility to protect.<sup>81</sup> The report identified gaps and proposed ways for the UN to strengthen its cooperation and draw on information and analysis from regional and sub-regional arrangements to identify signs of danger and undertake or support timely and effective preventative action at the sub-regional, regional, or global level.<sup>82</sup>

This chapter explained the evolution of the R2P within the UN and shows that this concept passed through several stages, starting in the 1990s with the Rwanda genocide and the first official resolution (1674) on the Protection of Civilians in Armed Conflict in 2006 until recently with the case of Libya<sup>83</sup> and Côte d'Ivoire.<sup>84</sup> Also this chapter emphasized the main reports issued from 2001 until 2011 which explains the concept of R2P and its implementation within the UN. After describing the evolution of R2P, the following chapter analyzes the legality of R2P within the UN Charter.

---

<sup>80</sup> General Assembly Interactive Dialogue on Early Warning, Assessment and the Responsibility to Protect, GA/RES/63/308 ( august 2010)

<sup>81</sup> *Id.*

<sup>82</sup> The role of regional and sub-regional arrangements in implementing the responsibility to protect Report of the Secretary-General, A/65/877-S/2011/393, ( June 2011)

<sup>83</sup> Security Council Approved 'No-Fly Zone' over Libya.

United Nations Security Council Resolution 1973, SC/10200 ( march 2011)

<sup>84</sup> United Nations Security Council Resolution 1975, S/RES/1975 ( march 2011)



### **III. UN charter and R2P**

The concept of R2P emerged several years after the creation of the UN Charter. The UN Charter has not been modified since 1945 while the R2P concept was born in the 1990s. The concept of the responsibility to protect therefore need to be viewed within the context of the existing international legal system of the use of force and collective security as it is defined and shaped by the U.N. Charter. This chapter analyzes the way the R2P fits within the existing framework of protection of international peace and security both globally and with the help of regional organizations For this purpose the following section analyzes the issue of the prohibition or threat of use of force within the UN charter, also the authorization of the Security Council to intervene under chapter VII in order to maintain peace and security also the cooperation between the UN and regional organizations to intervene in order to maintain peace and security.

#### **A. Use of force in the UN Charter and R2P**

##### **1. Legality of use of force according to the UN Charter**

This chapter clarifies the legality of use of force according to the UN Charter. The first part of the chapter identifies the reasons that resulted in the creation of the UN. In 1946 United Nations (UN) took the place of the League of Nations, which had the same aspirations. The UN Charter is more detailed and precise than the League Covenant, since the founders of the UN aimed to establish more effective mechanism to support international peace and security.<sup>85</sup> In this framework, in order to keep the peace and security, the Charter first of all offers peaceful settlement of disputes.<sup>86</sup> Article 33 of the Charter provides that the parties to any dispute can seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, and if it is necessary the Security Council can call upon the parties to settle their dispute by such

---

<sup>85</sup> NURULLAH YAMALI, The use of force for collective security and peacekeeping at the end of the twentieth century 3, <http://www.justice.gov.tr/e-journal/pdf/LW7042.pdf>

<sup>86</sup> *Id.*

means.<sup>87</sup> If a dispute cannot be resolved by these peaceful means, and the continuance of it constitutes a threat to the peace, the Security Council will make recommendations, or decide what measures can be taken. These measures, which include use of force as well, are clarified in Chapter VII of the Charter.<sup>88</sup>

The UN Charter constitutes the prevailing normative framework that governs the use of force. The Preamble to the Charter sets out the fundamental purpose of the organization, which is to maintain international peace and security.<sup>89</sup> To reach this objective, the first chapter identifies a series of common aims and principles or guidelines for action, the fundamental purpose of which is the maintenance of international peace and security art. 1.1.<sup>90</sup>

The general prohibition of the use of force can be considered as the starting point for the Charter's system for the maintenance of international peace and security art. 2.4.

<sup>91</sup> According to Robert Kolb<sup>92</sup>, the system created in the Charter contains two parts: the preventive part which is dedicated to the peaceful settlement of disputes in Ch. VI and economic and social cooperation in Ch. X and a repressive part that regulates the coercive powers of the UNSC in Ch. VII. The maintenance of international peace and security rests fundamentally with the Security Council and the General Assembly. The UNSC is the organization that holds the primary responsibility for this and must carry out its duties in this respect in accordance with the means and principles of the United Nations art. 24(2).<sup>93</sup> This is mentioned in Article 24(1) of the Charter, which justifies this responsibility being conferred on the UNSC in order to ensure prompt and effective action.<sup>94</sup> The principal exceptions to the general prohibition of the use of force are the right to legitimate self-defense and the collective security system. The first of these exceptions is set out in Article 51, which set up the characteristics of the right of

---

<sup>87</sup> Charter of the United Nations, *supra* note 18

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Matilde Pérez Herranz, The Security Council and the Legitimacy of the Use of Force: Legal, Normative and Social Aspects 13 (2010), [http://www20.gencat.cat/docs/icip/Continguts/Publicacions/WorkingPapers/Arxius/wp09\\_eng.pdf](http://www20.gencat.cat/docs/icip/Continguts/Publicacions/WorkingPapers/Arxius/wp09_eng.pdf)

<sup>92</sup> ROBERT KOLB, LE DROIT INTERNATIONAL RELATIF AU MAINTIEN DE LA PAIX 51 (Brussels: Helbing & Lichtenhahn/Bruylant) (2003)

<sup>93</sup> Charter of the United Nations *supra* note 18

<sup>94</sup> *Id.*

legitimate self-defense (imminent, individual or collective), the enabling factor (armed attack) and the conditions under which it must be carried out (its provisional nature and subsidiary with respect to the collective security system).<sup>95</sup> To these, three additional conditions deriving from general international law must be added, namely immediacy, necessity and proportionality.<sup>96</sup>

The second exception to the prohibition of the use of force is the collective security system mentioned in Chapter VII of the UN Charter. The Security Council is responsible for determining the existence of threats to peace, breaches of peace or acts of aggression, which vary from vague threats through to specific acts of aggression art. 39.<sup>97</sup> Once the situation has been categorized as one of these types, the UNSC has powers to make recommendations or decisions to maintain or reestablish the peace. Moreover, the UNSC can state provisional measures to prevent the situation from worsening, such as a ceasefire, the withdrawal of troops, a truce or an armistice, amongst others art. 40.<sup>98</sup> In order to maintain or reestablish international peace and security the UNSC can take measures that do not involve the use of armed force, but which impact on the economic situation, transport and communications, or diplomatic relations art. 41.<sup>99</sup> In case these measures are considered inadequate or fail to bring about the desired effect, the UNSC can take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. These actions may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations art. 42. It is important to stress that even if the measures stated within article 41 are legally binding on member States, the military measures of Article 42 are linked to the signing of special agreements through which the signatory states place at the disposal of the UNSC “armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security” (Art. 43).<sup>100</sup> These agreements have never actually been signed, meaning that the system of collective security provided

---

<sup>95</sup> Charter of the United Nations, *supra* note 18

<sup>96</sup> Matilde Pérez Herranz, *supra* note 64, at 14

<sup>97</sup> Mehrdad Payandeh, *supra* note 13, at 485

<sup>98</sup> Charter of the United Nations *supra* note 18

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

for in the Charter has never been implemented. The UNSC has thus created substitute channels of action, provided for in the Charter or otherwise, in order to carry out coercive measures.<sup>101</sup> First of all, use is made of regional arrangements or agencies in order to apply coercive measures under the UN's authority Art. 53. Second, the UNSC has authorized member States to use force to guarantee that embargoes are respected or to re-establish international peace and security. Third, it has used the authorization of peacekeeping operations and of multinational forces carrying out equivalent functions to defend its mandate.<sup>102</sup>

The authorization of the use of force by the UNSC must fulfill five requisites in order to be legal. First of all, the UN must pass a resolution authorizing coercive action by a multinational force. As Olivier Corten points out, UNSC authorizations resorting to the use of force can be explicit, when specific measures are detailed in the text of the resolution itself, or implicit when the resolution resorts to the customary method of all necessary means.<sup>103</sup> This latter method of authorization has been the one most used by the UNSC. Second, any resolution that is passed must comply with the Charter, both in its form and content. Third, any military action must be in accordance with the UNSC resolution.<sup>104</sup> Olivier Corten states that, "in practice, the UNSC has resorted to the criterion of necessity, although prescribing the use of all means necessary does not represent the unconditional and unlimited right to use military force. Given that actual cases of authorization have been highly varied, their classification is difficult."<sup>105</sup> In addition, he stated that interpretation must be done on a case by case basis and the transcripts of the debates reviewed in order to be certain that the use of force is understood to be included in the resolution.<sup>106</sup> Fourth, both financing and the command of operations are independent of the UN.<sup>107</sup> The cost of the operation is to be met by the

---

<sup>101</sup> Matilde Pérez Herranz, *supra* note 64, at 14  
[http://www20.gencat.cat/docs/icip/Continguts/Publicacions/WorkingPapers/Arxiu/wp09\\_eng.pdf](http://www20.gencat.cat/docs/icip/Continguts/Publicacions/WorkingPapers/Arxiu/wp09_eng.pdf)

<sup>102</sup> Ugo Vilani, The Security Council's authorization of enforcement action regional organization 537-540 (2002) [http://www.mpil.de/shared/data/pdf/pdfmpunyb/villani\\_6.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/villani_6.pdf)

<sup>103</sup> OLIVIER CORTEN LE DROIT CONTRE LA GUERRE, L' INTERDICTION DU RECOURS A LA FORCE EN DROIT INERTATIONAL 507-508(Paris editions Pedone) (2008)

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

participating states, together with voluntary contributions from other states which are unable or unwilling to get involved on the ground. The operations are to be carried out by a multinational force; an aggregation of national forces each operating under its own flag. Fifth, the UNSC must stay in control of the authorized action. Basically, the means of control used by the UNSC for any authorized action include the obligatory submission of written reports from the states involved, the state commanding the operation or the Secretary-General.<sup>108</sup>

Kolb and Corten's analysis for the legality of use of force within the UN is same as the analysis of Evans. According to Evans, the use of force in contemporary international law refers to one principle and two exceptions in the Charter of the United Nations. One principle refers to the Article 2(4) of the U.N. Charter on the principle of the prohibition on the threat or use of force and the two exceptions refer to the legal use of force provided in the U.N. Charter, mainly the right of self-defense, Article 51 and the forcible action taken or authorized by the U.N.<sup>109</sup> Articles 42 and 53 the former is the unilateral resort to force by states, the latter is the use of force in the U.N. collective enforcement system.<sup>110</sup> Essentially, only two types of military actions are considered legal, one is the action authorized by the Security Council of the United Nations; the other is the inherent right of self-defense of victim states. There are three ways to initiate military intervention under R2P: The first is an authorization from the Security Council of the UN; the second is the General Assembly redresses the situation under the Uniting for Peace procedure for an authorization for an emergent protection action; the third is regional organizations act under the Chapter VIII of the UN charter, subject to their seeking authorization from the Security Council.<sup>111</sup>

---

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Gareth Evans, *The Responsibility to Protect and The Use of Military Force* (2007), available at <http://www.crisisgroup.org/en/publication-type/speeches/2007/evans-the-responsibility-to-protect-and-the-use-of-military-force.aspx>

<sup>111</sup> *Id.*

The following paragraph focuses on the first way which is the authorization from the Security Council of the UN. The Responsibility to Protect leads the Security Council to interpret broadly the concept of a threat to the peace in accordance with the U.N. Charter, only when the Security Council determines the existence of any threat to the peace, breach of the peace or act of aggression in accordance with Article 39, Article 42, a global enforcement action or Article 53 a regional enforcement action can be invoked to carry out or authorize implementation military actions.<sup>112</sup> If genocide, war crimes, ethnic cleaning and crimes against humanity are committed within a sovereign state, which is not related to aggression, it does not necessarily result in a threat to the peace or a breach of the peace. The determination of a threat to international peace and security is a prerequisite for the authorization of military intervention from the Security Council.<sup>113</sup>

Basically, the threats to the peace in Article 39 of the UN Charter refer to cross-border conflicts. The implementation of R2P depends on the interpretation of a threat to peace by the Security Council.<sup>114</sup> The perpetration of the four crimes within a state constitutes a threat to peace in Article 39 of the UN Charter, is not answered in the Charter nor does it stipulate what situation is a threat to peace.<sup>115</sup> Statements made at the San Francisco conference indicate that the drafters of the U.N. Charter deliberately intended to leave the determination of what constitutes a threat to the peace to the discretion of the Security Council.<sup>116</sup> This approach is further supported by the ruling of the International Court of Justice in the *Certain Expenses* case in which the court held that every organ of the United Nations principally determines the scope of its jurisdiction.<sup>117</sup> Theoretically, it is possible for the Security Council to authorize military intervention through an expansion of interpretation of “a threat to the peace” to cover internal conflicts involving four crimes and the four crimes committed by a government. Mehrdad Payandeh stated that

---

<sup>112</sup> UN Charter *supra* note 18

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Mehrdad Payandeh, , *supra* note 13, at 494

<sup>116</sup> United Nations Conference on International Organization, S.F., U.S., Apr. 25-June 26, 1945 Report of Mr. Paul-Boncour, Rapporteur, on Chapter VIII, sec. B, U.N. Doc. 881 (English) III/3/46 (June 10, 1945), reprinted in III UNCIO XII 502, 505.

<sup>117</sup> *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. 151, 168 (July 20).

“The Council acts on a case-by-case basis, and often emphasizes the unique character of a situation in which it decided to intervene. The endorsement of the responsibility to protect can therefore contribute to the entrenchment of the power of the Security Council to take humanitarian action.”<sup>118</sup> Yao Huang in the article *On the Military Intervention under the Doctrine of the Responsibility to Protect* stated an example illustrating this issue.<sup>119</sup> In 2006 after several calls upon the Government of Burma to end the systematic violations of human rights and fundamental freedoms in Burma and to put an end to the military operations targeting civilians the Security Council placed the issue of Burma as a threat to international peace and security on its agenda. China and Russia voted no claiming that the Security Council was not the appropriate forum for discussing Burma.<sup>120</sup> In their explanatory statements, the Chinese and Russian representatives stated that the proposed resolution fell outside the mandate of the Security Council as the situation did not threaten international or regional peace and was therefore not appropriate for action by the Council. The Chinese representative argued that the situation in Burma is mainly an internal affair of a sovereign state.<sup>121</sup>

Related to that example, an expansion of Article 39 the Security Council can determine the existence of any threat to the peace, breach of the peace, or act of aggression and make recommendations, or decide what measures can be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security might raise controversy as it causes concern from some states about infringements of sovereign and intervention of internal affairs of other states. “Huang stated that many states and scholars, particularly developing countries and their scholars question the authorization of the use of force from the Security Council for military intervention on internal crisis in other states in post-Cold War era.”<sup>122</sup> The representative of China stated that the U.N Charter imposes the Security Council a mandate to maintain international peace and security, the prerequisite for action is the existence of a threat to the peace, the breach of

---

<sup>118</sup> Mehrdad Payandeh, *supra* note 13, at 495

<sup>119</sup> Yao Huang, *On the Military Intervention under the Doctrine of the Responsibility to Protect*, available at [http://a10014931063.oinsite.cn/\\_d271634455.htm](http://a10014931063.oinsite.cn/_d271634455.htm)

<sup>120</sup> Security Council fails to adopt draft resolution on Myanmar, SC/8939 (January 2007)

<sup>121</sup> *Id.*

<sup>122</sup> Yao Huang, *supra* note 119

the peace and act of aggression.<sup>123</sup> The Security Council should consider R2P within the framework of the maintenance of international peace and security to avert the abuse of it. This case about the situation in Myanmar shows that R2P is a tool that the UN can use to maintain peace and security but the issue is to identify when it is a threat to international peace and security. Furthermore, the Responsibility to Protect Prompt the Security Council to interpret broadly the Concept of “a threat to the Peace”

## **2. Legality of R2P according to the ICSS report and General Assembly World Summit 2005**

The following section analyzes the legality of R2P according to the ICSS report and the General Assembly World Summit 2005. In the ICSS report the commission agreed that the Security Council authorization must in all cases be sought prior to any military intervention action being carried out:

Those calling for an intervention must formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing; it should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.<sup>124</sup>

In addition the commission added that article 42 authorizes the Security Council, in the event that non-military measures prove inadequate to decide upon military measures as may be necessary to maintain or restore international peace and security.<sup>125</sup> In addition they stated that even if these powers were interpreted closely during the Cold War, since then the Security Council has taken a very expansive view as to what constitutes international peace and security. As a result, for this purpose, and in practice an authorization by the Security Council has almost invariably been universally accepted as conferring international legality on an action.<sup>126</sup> From the time when with the development made by the International Commission on Intervention and State

---

<sup>123</sup> Security Council fails to adopt draft resolution on Myanmar, SC/8939 ( January 2007)

<sup>124</sup> ICSS report *supra* note 241, at 50

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*



Sovereignty (ICISS) in 2001, the responsibility to protect concept started to be supported by a diverse group of states, international and regional organizations and civil society groups, and has led to major projects of systemic integration and rationalization at and around the United Nations.<sup>127</sup> Anne Oeford stated that:

Many commentators, including most international lawyers, have argued that the responsibility to protect concept remains of limited legal significance. Most international lawyers have concluded that the version of the responsibility to protect concept enshrined in the World Summit Outcome and accepted by Members of the General Assembly cannot be understood to impose new legal obligations that are binding upon states acting either unilaterally or collectively.<sup>128</sup>

This means that according to the ICISS report R2P does not change any legal obligations of the states which mean that R2P does not oppose the articles of the UN charter and that it fits within the Charter. The World Summit does not add new obligations it only shows them clearly.<sup>129</sup> The responsibility of the state to protect those within its territory or jurisdiction from genocide and other mass atrocities was already reflected in the Genocide Convention,<sup>130</sup> international and regional human rights treaties and the laws of war.<sup>131</sup> Overall, both the ICISS report and the World Summit explains clearly that R2P is legal and does not contradict the UN Charter. According to the UN Charter the main

---

<sup>127</sup> Anne Orford, *From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept* 401 (2011), <http://docserver.ingentaconnect.com/deliver/connect/mnp/18759858/v3n4/s5.pdf?expires=1339376658&id=69223254&titleid=75004686&acname=Guest+User&checksum=4BF8A9661465CA3C2EA72AD07D3C8439>

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, *entered into force* Jan. 12, 1951.

<sup>131</sup> Anne Orford, *supra* note 127, at 402

( See, as representative examples of legal scholarship, Jutta Brunée and Stephen J Toope, 'The Responsibility to Protect and the Use of Force: Building Legality?', *Global Responsibility to Protect* 2: 191-212 (2010), p. 192; Hilary Charlesworth, 'Feminist Reflections on the Responsibility to Protect Concept', *Global Responsibility to Protect* 2: 232-249 (2010), pp. 235, 248; Strauss, 'A Bird in the Hand', pp. 296-99; Carlo Focarelli, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine', *Journal of Conflict and Security Law* 13: 191-213 (2008), p. 193; Amrita Kapur, "'Humanity as the A and Ω of Sovereignty': Four Replies to Anne Peters", *European Journal of International Law* 20: 560-67 (2009), p. 562; Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *American Journal of International Law* 101: 99-120 (2007); Geljen Molier, 'Humanitarian Intervention and the Responsibility to Protect after 9/11', *Netherlands International Law Review* 53: 37-62 (2006). For the view that the responsibility to protect concept does impose a new obligation upon the Security Council to intervene in situations of mass atrocity, see Anne Peters, 'Humanity as the A and Ω of Sovereignty', *European Journal of International Law* 20: 513-544 (2009), pp. 540, 544.)

purpose of the UN is to maintain peace and security which means that R2P can be used as a way to reach this goal.

## **B. UN and regional organization cooperation to implement R2P**

The following section explains the cooperation between the UN as the universal organization and regional organizations in maintaining peace and security. According to article 24 in Chapter V of the Charter the primary responsibility for the maintenance of international peace and security is within the Security Council. The Charter provides a role for regional organizations and arrangements in the maintenance of peace and security in their respective regions.<sup>132</sup> In Chapter VI Article 33(1), provides that parties to any dispute endangering international peace and security must, first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.<sup>133</sup> In Chapter VIII, Article 52(1) stipulates that nothing in the Charter is to preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action.<sup>134</sup> It goes on to ask member states entering into such arrangements or disputes through such regional arrangements or constituting such agencies to make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.<sup>135</sup> On the matter of enforcement action by regional arrangements, under Chapter VII Article 51, of the Charter, recognizes the inherent right of individual or collective self-defense. Chapter VIII, Article 53 (1), provides that the Security Council can, where appropriate, use such regional arrangements and agencies for enforcement action under its authority.<sup>136</sup> However no enforcement action can be taken under regional arrangements or by regional agencies without the authorization of the Security Council. Furthermore, Article 54 provides that the Security Council can at all times be kept fully informed of activities

---

<sup>132</sup> Charter of the United Nations, *supra* note 18

<sup>133</sup> Asbjorn Eide, Peace-Keeping and Enforcement by Regional Organizations: Its Place in the United Nations System 131, <http://www.jstor.org/stable/422651>

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Robert Lyle Butterworth, Organizing Collective Security: The UN Charter's Chapter VIII in Practice 198 <http://www.jstor.org/stable/2009890>.

undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.<sup>137</sup>

Overall, according to the UN Charter regional organizations can cooperate with the UN in order to maintain peace and security. Nevertheless, the cooperation between the UN and regional organizations was not enough. As the Cold War ended, it was hoped that the relevant parts of the UN Charter concerning the role of regional organizations and arrangements in the maintenance of international peace and security could be invoked effectively. However, the cooperation was not really sufficient until the 1990s. Therefore, in the *Agenda for Peace*, issued on 31 January 1992, the Secretary-General Boutros Ghali recommended a greater role for regional organizations in peace-related activities:

But in this new era of opportunity, regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the purposes and principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII.<sup>138</sup>

In addition, the ICSS report pointed out the importance of such cooperation. According to the ICSS report regional organizations can play an effective role in maintaining peace and security. As many human disasters have significant direct effects on neighboring countries through spill-over across national borders taking such forms as refugee flows or use of territory as a base by rebel groups:<sup>139</sup>

Such neighboring states will thus usually have a strong collective interest, only part of which will be motivated by humanitarian concerns, for dealing rapidly and effectively with the catastrophe. It has long been recognized that neighboring states acting within the framework of regional or sub-regional organizations are often better placed to act than the UN, and Article 52 of the Charter has been interpreted as giving them considerable flexibility in this respect. ...All this should facilitate mobilizing the necessary will for fulfilling the responsibility to protect and for ensuring sustainability and follow-up.<sup>140</sup>

---

<sup>137</sup> *Id.*

<sup>138</sup> Cooperation between the United Nations and Regional organization / arrangements in a Peacekeeping environment 6 ( march 1999)

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/UNRO%20Cooperation%20between%20the%20UN%20and%20Regional%20Organizations.pdf> ( see an agenda for Peace A/47/277 )

<sup>139</sup> ICSS report *supra* note 41, at 53

<sup>140</sup> *Id.*, at 54

It is clear that it is better to involve regional organizations to help the UN in order restore peace and security. As the regional organization can be more familiar with the countries within the region and could help in the way to solve the conflict. According to the UN Charter, the main body that can authorize any action is the Security Council. The only thing regional organizations can do is to cooperate with the UN. This also means that the implementation of R2P does not contradict the UN Charter. In interpreting the Charter R2P is a tool to intervene in order to save civilians. The charter allows the Security Council to enforce actions for the purpose of maintaining peace and security. A recent example of the cooperation between regional organization and the UN is the case of a crisis in Africa is the case of Côte d' Ivoire.<sup>141</sup> The 2010 presidential election in Côte d' Ivoire resulted in a massive internal armed conflict between opposing supporters. The African Union (AU) and the Economic Community of West African States (ECOWAS) responded to with efforts to resolve the crisis through mediation and diplomatic pressure.<sup>142</sup> Acting under Chapter VII of the Charter of the United Nations the Security Council adopted Resolution 1975 on 30<sup>th</sup> March, 2011, considering that the attacks taking place in Côte d' Ivoire against the civilian population could amount to crimes against humanity, determining that the situation in Côte d' Ivoire continues to constitute a threat to international peace and security.<sup>143</sup>

Finally we can conclude that the concept of R2P has so far not modified the present law and does not change any legal obligations of the use of force, but it has some effects on the collective coercive measures of the U.N. The only issue the R2P concept adds is that it is a tool for the Security Council to enforce its action. In addition, the UN Charter recognizes legitimate roles for regional organizations and regional arrangements in Chapter VIII.<sup>144</sup> The Charter requires action by regional organizations always to be subject to prior authorization from the Security Council and R2P is also a tool to enforce the purpose of the UN. The problem is that within the Security Council not all the countries participate in issuing such resolution also the five permanent use veto power in

---

<sup>141</sup> Security Council Resolution 1975 S/RES/1975( march 2011)

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> UN Charter, *supra* note 18

their interests. The system of the Security Council is not fair as it is important that most members in the UN can have a voice in such decisions.

#### IV. The Uniting for Peace Resolution

This section explains the relation between the general assembly and the Security Council, also it analyze the uniting for peace resolution and whether it could be a solution to overcome the veto power or no.

The UN Charter grants the five permanent members veto power in three main areas: Security Council decision-making, the Charter amendments, and the appointment of the Secretary-General. Nowhere does the Charter oblige the P5 to provide an explanation for any vetoes.<sup>145</sup> The motivation for the P5 veto power is to ensure that the UN Security Council did does suffer the same outcome as its predecessor the League of Nations<sup>146</sup> “The UN Security Council was created after the most destructive war in history to help the world respond to global security threats.”<sup>147</sup> Basically, the veto power was granted to the P5 as way to reassure that their interests would not be ignored and in the hope that it would ensure their participation in the new organization.<sup>148</sup> Kara McDonald argues that “The UN Charter establishes the UNSC as the premier international watchdog, designates the five permanent members (P5) as guarantors of global peace, and endows each with a veto.”<sup>149</sup> However, since its establishment in 1946, the Security Council has been faced with considerable criticism by many scholars such as Jonas von Freiesleben, Kara McDonald, Sahar Okhovat and Erik Voeten. Since that time there have been many calls for the reform of the Council. For example, in the report A More Secure World: Our Shared Responsibility it is stated that the Security Council needs to be reformed

Models A and B for enlargement, both of which suggested expanding the Council to 24 members. Model A proposed adding six new permanent seats, but with no

---

<sup>145</sup> The Responsibility Not To Veto: A Way Forward 3 ( 2010)

| [http://globalsolutions.org/files/public/documents/RN2V\\_White\\_Paper\\_CGS.pdf](http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf)

| (Article 27 of UN Charter “1 Each member of the Security Council shall have one vote. 2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”)

| <sup>146</sup> *Id.*

<sup>147</sup> Kara C. McDonald and Stewart M. Patrick, UN Security Council Enlargement and U.S. Interests17 (2010)[http://www.google.com.eg/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CDIQFjAB&url=http%3A%2F%2Fwww.cfr.org%2Fcontent%2Fpublications%2Fattachments%2FUNSC\\_CSR59.pdf](http://www.google.com.eg/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CDIQFjAB&url=http%3A%2F%2Fwww.cfr.org%2Fcontent%2Fpublications%2Fattachments%2FUNSC_CSR59.pdf)

<sup>148</sup> NICO KRISCH, THE GREAT POWERS AND THE SECURITY COUNCIL 136 ( in Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum eds Oxford University Press,( 2008)

<sup>149</sup> Kara C. McDonald, *supra* not 68 at 16

veto power, and three new two-year term elected seats. Model B created a new category of eight seats, renewable every four years, and one new two-year nonrenewable seat.<sup>150</sup>

A large part of the criticism is due to the structure of the Council that many believe is undemocratic especially because it gives considerable power and privileges to certain countries of the world. For example Jonas von Freiesleben stated that:

The Security Council is without a doubt the most powerful organ of the United Nations. The Charter has given it primary responsibility for the maintenance of global peace and security and its decisions are binding for all Member States. Its limited geographical balance combined with five exclusive permanent seats that have veto powers, however, makes the Security Council less representative than desired by many Member States – especially emerging ‘middle’ powers – and they are increasingly calling for a restructuring of the Council.<sup>151</sup>

The main example is the veto power of the Permanent Five. This was reflected in both the Dumbarton Oaks and San Francisco meetings to establish the UN where the great powers made it clear to the smaller powers that their choice was to accept an organization with great power privilege or no organization at all.<sup>152</sup> The veto power was intended “to transform a wartime alliance into a big-power oligarchy to secure the hard won peace that would follow.”<sup>153</sup> “The provisions on the structure, procedures, and competences of the Security Council were then accepted by the fifty nations attending the San Francisco Conference against considerable opposition from the medium and smaller powers.”<sup>154</sup> Even though the rationale for the veto system was widely recognized as being of foundational importance to the UN system there have been many attempts to place limits on the P5 veto powers.<sup>155</sup>

---

<sup>150</sup> Report of the High-level Panel, *supra* note 41 at 110

<sup>151</sup> Jonas von Freiesleben, Reform of the Security Council 1,

<http://www.google.com/eg/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&ved=0CDcQFjAC&>

<sup>152</sup> NICO KRISCH, THE GREAT POWERS AND THE SECURITY COUNCIL 136(Oxford University Press, 2008)

<sup>153</sup> *Id.* at 63

<sup>154</sup> Functions and Powers Article 24, 764

[https://ius.unibas.ch/uploads/publics/40490/20121220155634\\_50d327224317a.pdf](https://ius.unibas.ch/uploads/publics/40490/20121220155634_50d327224317a.pdf) (The Dumbarton Oaks Conversations took place in two phases, first between the representatives of the USSR, the UK, and the US, then between China, the UK, and the US. France did not participate. The text of the Dumbarton Oaks Proposals is reproduced in (1946/47) UNYB 4–9 and in UNCIO III, Doc 1 (G/P), 2–23))

<sup>155</sup> Sahar Okhovat, The United Nations Security Council: Its Veto Power and Its Reform 13 (December 2011) [http://sydney.edu.au/arts/peace\\_conflict/docs/working\\_papers/UNSC\\_paper.pdf](http://sydney.edu.au/arts/peace_conflict/docs/working_papers/UNSC_paper.pdf)

In reality, arguably the first effort to limit the veto came at Dumbarton Oaks when an Australian proposal to exclude the veto from all arrangements relating to the peaceful settlement of disputes was put to a vote but failed to attract enough support.<sup>156</sup> As Robert Hill, former Australian ambassador to the United Nations, summarizes, “the Security Council is a club and P5 is a club within a club”.<sup>157</sup> After the UN was established there were several calls to reform the veto power, the most common justification being that the veto violated the principle of sovereign equality, that it would be used as a tool of great power domination, and that it would effectively exempt the P5 from being governed by the Council.<sup>158</sup> One of the most successful endeavor in relation to limiting the veto power came from within the P5 when in 1950 US Secretary of State, Dean Acheson, developed a proposal designed to neutralize the Soviet Union’s veto power in relation to the Korean War.<sup>159</sup> In what became known as the ‘Uniting for Peace’ procedure, Acheson came up with the idea of turning to the UN General Assembly to respond to aggression and threats to international peace and security when the Council was prevented from fulfilling its obligations because of the threat of a veto.<sup>160</sup> Since the transfer of an issue from the Security Council to the General Assembly is considered a procedural matter it was therefore not subject to the P5 veto.<sup>161</sup> Since then, the Uniting for Peace procedure has been used on more than ten occasions to facilitate UN action short of the use of force but its use has been rare in recent decades.<sup>162</sup>

The 1960s also witnessed a variety of debates about how to reform the Council but these led only to a change in the number of the members from eleven to fifteen not the veto power.<sup>163</sup> Similarly, the attempts to abolish the veto which took place under the Open-Ended Working Group on the Question of Equitable Representation of and an Increase in the Membership of the Security Council established by the General Assembly in 1993

---

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* (Interview with Robert Hill, June 2011.)

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 32

<sup>160</sup> The Responsibility Not To Veto: A Way Forward 3 (2010)  
[http://globalsolutions.org/files/public/documents/RN2V\\_White\\_Paper\\_CGS.pdf](http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf)

<sup>161</sup> Charter of the United Nations article 27 (2), *supra* note 18

<sup>162</sup> The United Nations today, 3 (2008),  
[https://ius.unibas.ch/uploads/publics/40490/20121220155634\\_50d327224317a.pdf](https://ius.unibas.ch/uploads/publics/40490/20121220155634_50d327224317a.pdf)

<sup>163</sup> The Responsibility Not To Veto: A Way Forward *supra* note 81 at 4



came to nothing.<sup>164</sup> In fact, the debate focused on the number of Security Council seats rather than on veto power.<sup>165</sup> The same thing happened in the debates leading up to the 2005 World Summit. Here the options on Security Council reform boiled down to two under which the Council would increase from 15 to 24 members with neither option entailing any change in the number of veto wielding powers.<sup>166</sup> This process seemed to confirm the conclusion of the UN Secretary-General's High-level Panel on Threats, Challenges and Change that there was no practical way of changing the existing members veto powers.<sup>167</sup> What these various cases illustrate is that there have long been arguments made which seek to limit the use of the veto. The Uniting for Peace Resolution is a way to overcome limitation of veto power as within the General Assembly each of the 193 members has a voice. This is potentially a vehicle for issuing R2P resolution outside the Security Council.

The UN's main goal is to maintain peace and security and both the General Assembly and the Security Council can cooperate in order to reach this goal. The General Assembly is the main deliberative body of the UN. As opposed to the Security Council, which is exclusive and grants unique veto rights to five nations, all 193 UN member nations have membership and equal voting rights in the General Assembly.<sup>168</sup> The General Assembly has several functions according to the UN Charter which are specified in chapter IV.<sup>169</sup> For example the GA can consider and make recommendations on the general principles of cooperation for maintaining international peace and security, including disarmament; discuss any question relating to international peace and security and, except where a dispute or situation is currently being discussed by the Security Council, make recommendations on it; discuss, with the same exception, and make recommendations on any questions within the scope of the Charter or affecting the

---

<sup>164</sup> Natalino Ronzitti, *The Reform of the UN Security Council* 2 (2010)

<http://www.iai.it/pdf/DocIAI/iai1013.pdf>

<sup>165</sup> *Id.*

<sup>166</sup> Report of the Secretary-General, *In Larger Freedom* (UN doc. A/59/2005, 21 March 2005), [http://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.2005\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.2005_En.pdf)

<sup>167</sup> Report of the High-level Panel, *supra* note 41

<sup>168</sup> , ROBERT KOLB, *AN INTRODUCTION TO THE LAW OF THE UNITED NATIONS* 120( Oxford and Portland 2010)

<sup>169</sup> Charter of the United Nations, *supra* note 18

powers and functions of any organ of the United Nations<sup>170</sup>. According to the Uniting for peace resolution of November 1950 resolution 377, the Assembly may also take action if the Security Council fails to act, owing to the negative vote of a permanent member, in a case where there appears to be a threat to the peace, breach of the peace or act of aggression.<sup>171</sup> The Assembly can consider the matter immediately with a view to making recommendations to Members for collective measures to maintain or restore international peace and security<sup>172</sup>. This means that the General Assembly can issue the uniting for peace resolution in order to intervene under the concept of R2P to save civilians from severe violence or genocide.

#### **A. The relation between the General Assembly and the Security Council**

The following section explains in details the relation between the General Assembly and the Security Council within the UN charter. According to article 1 of the UN Charter the purpose of the UN is to maintain international peace and security. The organization and its members must act in order to fulfil the main purpose of the UN.<sup>173</sup> The relation between the Security Council and the General Assembly is not a competitive one; rather, each organ seeks to facilitate the work of the other in its decision-making.<sup>174</sup> The General Assembly's power in maintaining international peace and security was an issue between the smaller states represented at San Francisco and the big powers.<sup>175</sup> In the Dumbarton Oaks Proposal, the big powers did not give any real power to the General Assembly.<sup>176</sup> At San Francisco, the smaller states insisted that not all the power should be in the hands of the Security Council.<sup>177</sup> As a result, Chapter VI of the Charter, which contains the provisions relating to the peaceful settlement of disputes, represents a compromise

---

<sup>170</sup> Robert Kolb, *supra* note 168

<sup>171</sup> General Assembly Res. 377 (A), 3 November (1950).

<sup>172</sup> Robert Kolb, *supra* note 168 at 120

<sup>173</sup> *Id.* at 121

<sup>174</sup> Rebecca Bloom and Lauren Vriens, *The role of the UN general assembly* (2011) available at <http://www.cfr.org/un/role-un-general-assembly/p13490>

<sup>175</sup> *Id.*

<sup>176</sup> Robert Kolb, *supra* note 168 at 21

<sup>177</sup> *Id.*

between the provisions granting generous powers to the General Assembly and the provisions attempting to restrict the powers and competence of the Assembly.<sup>178</sup>

However, the Assembly's power in maintaining international peace and security is not mandatory. It may only make recommendation to the members of the United Nations or to the Security Council or to both discuss any question relating to international peace and security, call the attention of the Security Council to situations which are likely to endanger international peace and security, and 'recommend measures for the peaceful adjustment of any situation.'<sup>179</sup> This means that the General Assembly has the power to make recommendations based upon its interpretation of a situation that may endanger international peace and security.<sup>180</sup> The binding decision-making power is vested in the Security Council either through forceful action or imposing other forms of sanctions under Chapter VII of the Charter. However, as mentioned the Security Council may also request that the General Assembly provide a recommendation under Article 12(1). While the Security Council's power is exercised in respect to any dispute or situation the functions assigned to it in the present Charter, the General Assembly can not make any recommendation with regard to that dispute or situation unless the Security Council so requests.<sup>181</sup> It is clear that both of them work for the same purpose but there are differences between them. On one side, the Security Council has five permanent members with veto power and also the resolutions passed by the SC are binding. On the other side, the General Assembly is more democratic in the sense that each member has a vote but the resolutions of the GA according to the UN charter are not binding. The Uniting for Peace resolution has been used several times to overcome the veto power. The following section explains in details the Uniting for Peace Resolution.

---

<sup>178</sup> Rebecca Bloom and Lauren Vriens *supra* note 174

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Robert Kolb, *supra* note 168 at 133

## **B. Uniting for Peace**

The following part covers the historical background about the uniting for peace with a detailed explanation on the case of the Suez Canal and the Uniting for peace resolution

### **1. Historical background**

#### **a. The role of UN in the decolonized world**

The idea that the UN has a responsibility to maintain order and protect life in the decolonized world began to take shape with the creation of the United Nations Emergency Force (UNEF) in response to the Suez crisis of 1956 and the UN operation in the Congo in 1960.<sup>182</sup> Since that time, the UN and other international actors have developed and systematized an expansive body of practices aimed at maintaining order and protecting life in the decolonized world. When the UN was requested to intervene in the Suez crisis in 1956 and the Congo crisis in July 1960, both the requesting governments and then UN Secretary-General Dag Hammarskjöld believed that the UN could operate as a neutral force to protect life, maintain order and preserve the independence of newly decolonized states.<sup>183</sup> The Suez and Congo crises were situations in which the old colonial powers were suddenly confronted with the material effects of decolonization. The creation of UNEF and UN operation in the Congo in response changed the landscape of international politics in two ways.<sup>184</sup> On the one hand, those operations signaled the end of a particular version of informal empire and worked to delegitimize the resort to force by powerful states with neo imperial ambitions.<sup>185</sup> On the other hand, the innovations in international executive rule that were consolidated and developed during that period such as fact-finding, peacekeeping, civilian administration and centralized forms of technical assistance have since expanded to become core

---

<sup>182</sup> Anne Orford, *supra* note 127, at 404

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

techniques for governing the decolonized world.<sup>186</sup> The following part describes the birth of the uniting for peace resolution.

## **b. The beginning of the Uniting for Peace Resolution**

The Uniting for Peace resolution was a result of the early Cold War division between East and West. The failure of the Security Council to perform the functions assigned to it by the Charter because of the veto used by the Soviet Union brought about a change in the relative power of the Council and the Assembly.<sup>187</sup> The Assembly had to take over the role of the Security Council when it was difficult to perform its primary responsibility to maintain international peace and security.<sup>188</sup> The Uniting for Peace resolution therefore realized broader support among the international community in general, which wanted to see the United Nations as active as it could be in restoring international peace and security.<sup>189</sup> As a result it was a great achievement for the General Assembly in performing its duty to maintain the most fundamental objective of the Charter peace. In 1950, North Korea invaded South Korea. The UN Security Council acted rapidly to deploy UN troops under US General Douglas MacArthur, to repel the North Korean forces. The Soviet Union was boycotting the UN at the time and thus was not able to exercise its veto as a permanent member of the Security Council. However, when the boycott ended the Soviet Union used its veto in the votes. Furthermore, it constantly questioned the validity of the resolutions of the Security Council adopted in its absence. This provoked the Council to call for an emergency session of the General Assembly, which adopted a Uniting for Peace resolution in early November 1950.<sup>190</sup> The resolution was actually a US proposal to make the UN more efficient in dealing with future threats to the peace.<sup>191</sup> However, the General Assembly adopted a series of resolutions on the

---

<sup>186</sup> *Id.*

<sup>187</sup> Kamrul Hossain, The Complementary Role of the United Nations General Assembly in Peace Management 81, <http://www.usak.org.tr/dosyalar/dergi/xRFmEzJVQqV3uGJbN7P19IghYDHJyd.pdf>

<sup>188</sup> *Id.*

<sup>189</sup> Christian Tomuschat, *Uniting for Peace* (2008), available at <http://untreaty.un.org/cod/avl/ha/ufp/ufp.html>

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

Korean issue after the Uniting for Peace procedure had been established in resolution 377 (A).<sup>192</sup> Resolution 498 (V), for example, adopted on 1 February 1951, which asked the members of the UN to increase their assistance to UN Force, perhaps indicates an action under the ‘Uniting for Peace’ resolution.<sup>193</sup>

## **2. The Suez Canal and the Uniting for Peace resolution**

The Uniting for Peace resolution was also used in 1956, at that time the UN faced a major crisis threatening the stability of the Middle East. The US and UK decided to withdraw their financial aid for the Aswan Dam.<sup>194</sup> Nasser decided to nationalize the Suez Canal and stated that all revenues from the canal would be used to finance the project. The French and British reacted strongly condemning that action.<sup>195</sup> Israel, in coordination with France and the UK, launched an attack on Egypt. The UN called for the first time an emergency session this was as a result of the failure of Security Council to take any actions because of the vetoes of France and UK. The issue was referred to the General Assembly under the uniting for peace resolution calling for a ceasefire and the withdrawal of all foreign forces.<sup>196</sup>

The UN action in the Suez led to the consolidation of three significant power-shifts in international relations. It was a moment at which former European imperial powers were forced to recognize that the conservation of the old colonial system was no longer possible.<sup>197</sup> It was obvious after Suez that powerful states would no longer readily be able to secure access to resources or strategic advantage through temporary occupation, police action or land appropriation.<sup>198</sup> In addition, newly independent states would not be free to deny foreign access to and control over resources. “As an alternative, the Suez operation sustained a second geopolitical shift the strengthening of an Americanized global

---

<sup>192</sup> General Assembly Res. 377 (A), 3 November (1950).

<sup>193</sup> General Assembly Res. 498 (V), 1 February (1951).

<sup>194</sup> Keith Petersen, The Uses of the Uniting for Peace Resolution since 1950 224 (spring 1959), <http://www.jstor.org/stable/2704390>

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> Anne Orford, *supra* note 127, at 410

<sup>198</sup> *Id.*

economy, premised upon openness to investment, free trade, nondiscrimination and the international management of resources in the decolonized world. Thirdly, the Suez operation empowered the UN executive function.”<sup>199</sup>

### 3- Debate regarding the General Assembly resolution 377

There was a debate concerning the Uniting for Peace Resolution (resolution 377). The Uniting for Peace procedure gave rise to a strong debate between the West and the Socialist countries. The debate was mainly based on political interest as each side was thinking whether it would benefit or no. In the end according to the UN Charter it was proven that the resolution was legal:

Resolution 377 (A):  
if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly consider the matter immediately with a view to make the appropriate recommendations to Members for collective measures, including in the case of a breach of the peace, or act of aggression to use armed force when necessary, to maintain or restore international peace and security.<sup>200</sup>

a- Possibility of the UNGA substituting the UNSC and issuing the Uniting for peace resolution

As I stated earlier that the Uniting for Peace procedure gave rise to a debate between the Western and the Socialist countries, the argument raised by the Soviet Union was that Articles 10 to 14 of the Charter indicates that the Security Council and the General Assembly cannot be substituted for one another; they only complement each other.<sup>201</sup> By raising a broader interpretation of Article 12, the pro-West countries argued that when the Council was paralysed by the veto, it was not functioning in the sense of that provision.<sup>202</sup> Article 12 (1) “while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly does not make any recommendation with regard to that dispute or situation unless the Security

---

<sup>199</sup> *Id.*

<sup>200</sup> General Assembly Res. 377 (A), 3 November (1950).

<sup>201</sup> Kamrul Hossain, *supra* not 187, at 83

<sup>202</sup> *Id.*

Council so requests.”<sup>203</sup> Article 12(2) “the Secretary-General, with the consent of the Security Council, notify the General Assembly at each session of any matters relative to the maintenance of international peace and security . . . or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.”<sup>204</sup>

In reaction, the Soviet Union replied that operation of the veto was an integral function of the Security Council. Furthermore, the proposed resolution would only require a procedural vote to transfer the matter from the Security Council to the General Assembly, while the special session called for under Article 20 needed a substantive vote. What is more, the Soviet Union argued that Article 11(2) 2 does not allow the General Assembly to take coercive action, as this action falls solely within the authority of the Security Council:<sup>205</sup>

Article 11 the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.<sup>206</sup>

In *Certain Expenses*,<sup>207</sup> the International Court of Justice explained the role of the General Assembly with regard to the maintenance of the peace. While the Court did not mention whether the General Assembly could recommend coercive action, it can be inferred from the Court’s view that the General Assembly is not barred from recommending enforcement action.<sup>208</sup> The basis of the Uniting for Peace resolution was to maintain the purposes and objectives of the United Nations, more accurately, the maintenance of international peace and security. Therefore, when the Security Council fails to perform its primary responsibility to maintain international peace and security, the

---

<sup>203</sup> Charter of the United Nations, *supra* note 18

<sup>204</sup> *Id.*

<sup>205</sup> Kamrul Hossain, *supra* note 187, at 83

<sup>206</sup> Charter of the United Nations, *supra* note 18

<sup>207</sup> *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. 151, 168 (July 20).

<sup>208</sup> *Id.*



General Assembly in which all member states participate need clearly to take up the responsibility.

The Uniting for Peace resolution represents an interpretation of Article 11(2) and 12 that has been accepted and acted upon by the members of the United Nations, including the Soviet Union and all other members originally opposed to the resolution.<sup>209</sup> The Charter itself declares that the General Assembly can make a recommendation on any important question, such as maintenance of international peace and security, with a two-thirds majority of the members present.<sup>210</sup> If both the General Assembly and the Security Council are seized of the same question, it could easily happen that contradictory solutions may be taken by each of these organs.<sup>211</sup> For this reason, it is quite natural that in this conflict of interest the Assembly should give way to that organ which is primarily responsible for the matter concerned. Therefore the Charter provides that the General Assembly cannot make any recommendation with regard to a dispute or situation while the Security Council is exercising its functions in respect of such dispute or situation (Article 12).<sup>212</sup>

After this debate all about the Uniting for Peace Resolution countries were reassured in particular after the ICJ advisory opinion that the General Assembly can issue the uniting for peace resolution. In addition, this right is within its duty that the UN charter imposed.<sup>213</sup> However, the legality of the Uniting for Peace resolution may still be questioned on a different issue. The Charter under Article 2(4) explicitly prohibits any kind of threat of force or use of force against the political independence and the territorial integrity of any state.<sup>214</sup> The only exceptions are action in self-defense under Article 51 and military action by the Security Council under Article 42.<sup>215</sup> The question arises whether an authorization by the General Assembly to use force may lead to a violation of Article

---

<sup>209</sup> Christian Tomuschat, *supra* note 189

<sup>210</sup> Charter of the United Nations, *supra* note 18

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

2(4).<sup>216</sup> The exceptions to the ban on the use of force are those undertaken in legitimate self-defense and those authorized by the United Nations. In the case of the Uniting for Peace Resolution, the General Assembly was only playing the role that should have been played by the Security Council. The inability of the Security Council to act caused this responsibility to be transferred to the General Assembly.<sup>217</sup> By its authorization in the resolution the General Assembly did not in fact pose any threat or use of force against the territorial integrity or political independence of any state. The General Assembly tends to resist aggression that has threatened the world peace.<sup>218</sup> For example, in the Korean conflict in 1950 the authorization of use of force was intended to help defend South Korea from the North Korean invasion; no offensive action was authorized. Therefore, it was only a self-defense measure.<sup>219</sup> Article 51 of the Charter justifies collective self-defense. This means that the General Assembly plays the role of the Security Council which was not possible as a result of the veto power of the P5.<sup>220</sup> However, the Uniting for Peace resolution is not binding.

#### b. Legality of the Uniting for Peace Resolution within the UN Charter

This section explores the legality of the uniting Peace resolution within the UN charter. In order to know whether it is possible to use the 377 resolution it is important to specify when exactly it can be used and under which chapter of the UN.<sup>221</sup> Under Part A paragraph 1 of the Resolution, the General Assembly can consider any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, whenever the Security Council, because of lack of unanimity of its permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security.<sup>222</sup> In that case, the General Assembly can consider the matter immediately with a view to making appropriate recommendations to Members for collective measures. Among these measures even the use of armed force might be recommended, if there is a

---

<sup>216</sup>Christian Tomuschat, *supra* note 189

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> Keith S. Petersen, *supra* note 194, at 225

<sup>221</sup> General Assembly Res. 377 (A), 3 November (1950).

<sup>222</sup> *Id.*

breach of peace or act of aggression.<sup>223</sup> The Resolution refers only to the highest degree of danger to peace. The Charter distinguishes several degrees of danger. The lower degree, motivating the application of Chapter VI, is represented by disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security Articles 33 and 34,<sup>224</sup> there the danger for peace is farther.<sup>225</sup> However, action under Chapter VII takes place only in cases of a threat to the peace, breach of the peace, or act of aggression Article 39.<sup>226</sup> Chapter VII coordinates rather different cases of danger to peace: on the one hand, cases where there is a great danger to peace, but the peace is not yet broken; on the other hand, cases where a breach of the peace has already occurred.<sup>227</sup> Article 39 makes no distinction between the two groups: in both groups of cases the use of even the strongest enforcement measures is equally authorized. The Resolution makes a distinction and provides different effects for each of the two groups. It reserves the use of armed forces only for those cases where the imminent danger has changed into an actual breach of peace or act of aggression.<sup>228</sup>

In this case fighting has already started and the means to suppress it might have recourse to fighting as well. On the contrary, where a threat to the peace exists, be it in the highest degree, but peace is not yet broken, fighting would start by collective action at a moment when there is perhaps a minor hope of preventing the threat to peace and of avoiding fighting from arising out of a breach of peace or act of aggression.<sup>229</sup> Andrassy states that “It is therefore reasonable to postpone the use of the extreme remedy till the moment when it is patent that the use of arms cannot be avoided.”<sup>230</sup> Reicher states that

The phrases "threat to the peace," "breach of the peace," or "act of aggression," when analyzed in the context of Chapters VI and VII, take a situation out of the former and place it squarely within the latter. When applied to the Uniting for Peace Resolution, therefore, these phrases create a definite limitation of a substantive nature, in as much as it is only when a problem reaches the level of

---

<sup>223</sup> *Id.*

<sup>224</sup> UN Charter *supra* note 18

<sup>225</sup> *Id.*

<sup>226</sup> Juraj Andrassy, *Uniting for Peace* 572(1956), <http://heinonline.org/HOL/Page?Handle=Hein.journals>

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

gravity contemplated in Chapter VII that the General Assembly may act under Part A of the Resolution; a simple Chapter VI situation is insufficient.<sup>231</sup>

c. Conditions that must be fulfilled before the General Assembly can proceed and issue Uniting for Peace Resolution

After analyzing the legality of the Uniting for Peace Resolution according to the UN Charter, I will focus on this section in exploring in details the conditions which need to be fulfilled before the General Assembly can proceed and issue Uniting for Peace Resolution. Part A of the resolution begins with what may be referred to as the essential pre-conditions the conditions which must be fulfilled before the Assembly may take any steps under the provisions which follow: "If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression."<sup>232</sup>

Four essential preconditions must be met before the General Assembly may proceed:

The Security Council must have failed to exercise its primary responsibility for the maintenance of international peace and security.<sup>233</sup> Furthermore, there must appear to be "a threat to the peace, breach of the peace or act of aggression." In addition, The Security Council's failure to exercise its primary responsibility must have been occasioned by one reason and one reason alone-the lack of unanimity of its permanent members.<sup>234</sup> This amounts to a significant constraint on the Assembly. If, for instance, the permanent members agree unanimously that the best course to follow is one of non-interference-inaction this precondition will not have been fulfilled and the Assembly will have no recourse under Resolution 377A (V), even if inaction is presumed to amount to failure.<sup>235</sup> The same would apply if the permanent members found themselves to be in unanimous agreement in opposing a resolution proposing concrete action. The Uniting for Peace

---

<sup>231</sup> Harry Reicher , The Uniting for Peace Resolution on the Thirtieth anniversary of its passage 12 ( 1981) [http://heinonline.org/HOL/Page?handle=hein.journals/cjtl20&div=6&collection=journals&set\\_as\\_cursor=2&men\\_tab=srchresults&terms=uniting|for|peace|resolution&type=matchall](http://heinonline.org/HOL/Page?handle=hein.journals/cjtl20&div=6&collection=journals&set_as_cursor=2&men_tab=srchresults&terms=uniting|for|peace|resolution&type=matchall)

<sup>232</sup> General Assembly Res. 377 (A), 3 November ( 1950).

<sup>233</sup> *Id.*

<sup>234</sup> Harry Reicher, *supra* note 231 , at 13

<sup>235</sup> *Id.*

Resolution, having been framed with the veto power in mind, only applies in cases of lack of unanimity.<sup>236</sup>

For the Uniting for Peace procedure, firstly the obligation under the Resolution is on the General Assembly to consider a matter immediately. “That is all very well as long as the Assembly happens to be in session at the relevant time. If, on the other hand, it is not in session-as was the case when the Afghanistan question arose”<sup>237</sup> it may meet in an emergency special session within twenty-four hours of the request Article 27(2).<sup>238</sup> This article provides that “decisions on procedural matters, while requiring nine affirmative votes, do not require the unanimity of the Council's permanent members. Requesting a meeting of the General Assembly is a procedural matter.”<sup>239</sup> Therefore, the Resolution declares as sufficient a simple majority as provided for procedural questions Article 27, paragraph 2.<sup>240</sup> Paragraph 1 of Part A concludes with two alternative procedures for convening an- emergency session: "Such emergency session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations." <sup>241</sup>

#### d. The General Assembly in Peacekeeping

This next section clarifies the General Assembly's role in authorization Peacekeeping forces. Peacekeeping forces were first used in 1956, when Israel, and later the United

---

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 20 (The sixth emergency special session of the United Nations General Assembly was held between 10 January – 14 January 1980 to consider the situation in Afghanistan. As the Soviet war in Afghanistan began members of the United Nations General Assembly requested the Security Council consider the situation. The USSR veto of a resolution led the other members to invoke the 'Uniting for Peace' resolution to defer the issue to the General Assembly in an emergency special session (resolution ES-6/2). It was the sixth emergency special session since the 'Uniting for Peace' resolution was adopted in 1950. The session was dominated by questions of its legitimacy since the Afghanistan government had invited the Soviet intervention in their civil war. Led by the non-aligned members, the session ended with a resolution from the General Assembly calling for the immediate, unconditional and total withdrawal of foreign troops from Afghanistan and the cessation of all outside intervention, subversion, coercion or constraint, of any kind whatsoever, so that its people could freely choose its own economic, political and social systems)

<sup>238</sup> Charter of the United Nations, *supra* note 18

<sup>239</sup> *Id.*

<sup>240</sup> Harry Reicher, *supra* note 231, at 21

<sup>241</sup> General Assembly Res. 377 (A), 3 November (1950).

Kingdom and France, invaded Egypt due to its nationalization of the Suez Canal and the General Assembly authorized a peacekeeping force in order to restore peace in the region. Moreover, the General Assembly did so when the vetoes of the United Kingdom and France had paralysed the Security Council. This course of events caused a debate over whether the General Assembly may authorize enforcement measures or whether the authorization of a peacekeeping mission is necessarily intended as an enforcement measure.<sup>242</sup>

In its advisory opinion in the *Certain Expenses*, the ICJ clearly stated that “Article 24 of the Charter gives the Security Council the primary responsibility for ensuring prompt and effective action for the maintenance of international peace and security.”<sup>243</sup> However, the General Assembly must also concern itself with international peace and security. Article 14 of the Charter authorizes the General Assembly to recommend measures for the peaceful adjustment of any situation.<sup>244</sup> The word ‘measures’ implies some kind of action, and the only limitation which Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Security Council requests the Assembly to do so. Accordingly, the advisory opinion continues:

Whenever the General Assembly proceeds under Article 11 or under Article 14, the implementation of its recommendations for setting up commissions or other bodies involves organizational activity – action – in connection with the maintenance of international peace and security. Such implementation is a normal feature of functioning of the United Nations. Such committees, commissions or other bodies or individuals, constitute, in some cases, subsidiary organs established under the authority of Article 22 of the Charter. The functions of the General Assembly for which it may establish such subsidiary organs include, for example, investigation, observation and supervision, but the way in which such subsidiary organs are utilized depends on the consent of the state or states concerned.<sup>245</sup>

The main question is therefore the division of functions between the Security Council and the General Assembly. The function of the General Assembly under Article 14 may lead to an action once committees or commissions are set up for the implementation of its

---

<sup>242</sup> Kamrul Hossain, *supra* not 187, at 88

<sup>243</sup> *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. at 163

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 165

resolution. This action may not however be a forceful one, unlike the ones the Security Council may initiate under Chapter VII of the Charter. For the implementation of an investigation, supervision or observation, the General Assembly must reach an agreement with the host state or states.<sup>246</sup> Therefore, action taken by the General Assembly is still a recommendatory measure leaving final acceptance of the measure upon the willingness of the state or states to which it is addressed.<sup>247</sup> The implementation of a measure recommended by the General Assembly depends upon whether the state or states are willing to comply with the relevant resolution; that is, it is an absolutely voluntary measure.<sup>248</sup> The General Assembly may play an important role through the authorization of peacekeeping forces in separating adversaries, maintaining cease-fires, delivering humanitarian relief, helping refugees and displaced persons return to their homes, demobilizing combatants, and creating conditions that, for example, promote democracy and allow for free elections to be held.<sup>249</sup> All these require action in a sense, perhaps not similar to the forceful measures envisaged in Chapter VII but certainly ones that help reduce the threat to international peace.<sup>250</sup>

The Soviet Union opposed the idea of establishing the peacekeeping force known as the UN Emergency Force after the Suez crisis, even if it visibly wanted the United Kingdom and France out of the Suez.<sup>251</sup> The argument of the Soviet Union and its allies was that the Charter has very specific provisions for the use of force by the United Nations.<sup>252</sup> Soviet Union and its allies cited the agreements on UN forces required under Article 43 of the Charter. As the requirement of Article 43 was not followed in forming the UN Emergency Force, and as alternatives were not provided in the Charter, it was necessarily unlawful.<sup>253</sup> Nevertheless, the supporters of the UN peacekeeping forces argued that it was not only the Security Council that could mobilize the UN police; where the use of veto in the Security Council makes the initiative unsuccessful, the General Assembly can

---

<sup>246</sup> Kamrul Hossain, *supra* note 187, at 88

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* at 89

<sup>253</sup> *Id.*

form such a body to maintain the peace. The idea of such peacekeeping forces was then supported by the majority in voting in the UN bodies.<sup>254</sup>

In the *Certain Expenses* case, the International Court of Justice decided all the relevant questions concerning the legality of the establishment of peacekeeping forces.<sup>255</sup> In response to the argument made by the Soviet Union and France that only the Security Council could authorize and supervise peacekeeping activities, the Court stated that the Council's responsibility for maintaining international peace and security is primary, not exclusive.<sup>256</sup> It noted that the General Assembly is also concerned with such matters.<sup>257</sup> The Assembly does not have to defer to the Security Council under Article 11(2) of the Charter unless enforcement action is necessary.<sup>258</sup> The Court also pointed out that the function of peacekeeping forces is not similar to that of the enforcement measures for which Article 43 conditions are to be met.<sup>259</sup> The issue was that the forces UNEF and ONUC were not authorized to take action against a state. However, they were sent with the consent of the states concerned.<sup>260</sup> They were not authorized to act against the host state but rather were cooperating with it. In general, the General Assembly may play an important role by establishing peacekeeping forces to mitigate escalation of a situation that could cause a serious threat to the peace if no such measure is taken.<sup>261</sup>

In the framework of the relevant phrases in paragraph 1 of Part A of Resolution 377A(V) suggests that if the Security Council has failed to exercise its primary peacekeeping responsibility in a case which it has defined to fall within Chapter VII, then the General Assembly may act.<sup>262</sup> However significant and wide the power in Part A may be, though, it has built into it an important limitation arising from the fact that the authority to recommend the use of armed force is confined to situations involving "a breach of the

---

<sup>254</sup> *Id.*

<sup>255</sup> *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. at 166

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> Kamrul Hossain, *supra* note 1 87, at 90

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> General Assembly Res. 377 (A), 3 November (1950).



peace or act of aggression.<sup>263</sup> In relation to the Security Council's powers in the area of international peacekeeping, Chapters VI and VII distinguish between relatively less and more serious cases, with the stronger powers in Chapter VII reserved for the latter. The threshold of applicability of Chapter VII is found in the phrases "threat to the peace," "breach of the peace," or "act of aggression". Only in these circumstances may the Security Council itself invoke its more serious powers, including the use of force.<sup>264</sup>

In concluding the General Assembly has peacekeeping powers but there are three limitations:

1. The first of these is the applicability of Article 12. However, this is a mere formality if a majority of nine members of the Security Council are prepared to vote for the removal of the relevant item from the agenda.
2. Resolutions pursuant to Articles 10, 11 and 14, insofar as they contain "recommendations with respect to the maintenance of international peace and security," require a two-thirds majority for passage in the General Assembly.
3. The General Assembly may only "recommend" if a sufficient number of states are interested and willing to lend their support in carrying out a recommendation; there is no reason why it cannot be as effective as a binding decision.<sup>265</sup>

e. the Uniting for Peace in practice

This section illustrates the Uniting for Peace resolution in practice. I will refer to several cases in which the Uniting for Peace resolution was used. Several scholars argue that the Uniting for Peace was not used many times. In the 1980s, and writing on the occasion of the 30<sup>th</sup> anniversary of the Uniting for Peace resolution, Reicher stated that "despite the passage of three decades, the Resolution has been invoked on only a handful of occasions."<sup>266</sup> The thirtieth anniversary, coupled with the occurrences of the use of the resolution particularly in the Afghanistan case. The Security Council had in fact considered the Afghanistan question, but the non-passage of the draft resolution had prevented it from exercising its primary responsibility for the maintenance of international peace and security.<sup>267</sup> Reicher argues that:

---

<sup>263</sup> Harry Reicher, *supra* note 231, at 13

<sup>264</sup> *Id.*

<sup>265</sup> United Nations Charter *supra* note 18

<sup>266</sup> Harry Reicher, *supra* note 231, at 1

<sup>267</sup> *Id.*

The failure had been brought about by the lack of unanimity of its permanent members. Finally, the substantive precondition in the Uniting for Peace Resolution had, in the Council's view, been fulfilled-a fact to be inferred from the transmission of the case to the General Assembly pursuant to that Resolution.<sup>268</sup>

The cases of Suez, Hungary, the Congo, Bangladesh and Afghanistan were considerably clearer in this respect, as in each case the Security Council itself passed the matter to the General Assembly by resolution.<sup>269</sup> In the Lebanese case, while the Security Council did- not refer to the Uniting for Peace Resolution in its Resolution 129 (1958),<sup>270</sup> which passed the matter to the Assembly, it was referred to the GA as emerging from the Uniting for Peace Resolution by calling "an emergency special session" of the Assembly. It is clear that the Uniting for Peace was not used many times after 30 years of its birth. Even after 60 years the situation didn't change as Cowling argues that:

The Uniting for Peace Resolution has been utilized on a number of occasions since it was passed in 1950. It did not play any role in the Korean conflict since the Russian government had withdrawn from the SC which meant that the intervention of the west would not be impeded by the Russian veto. He also says that it was also stressed that the GA can only make recommendations and not binding decisions (as is the case with the SC) and that the use of military enforcement action must be precipitated by a determination as to the existence of a threat to the peace, breach of the peace or act of aggression by the Council.<sup>271</sup>

The Problem with the Uniting for Peace is that it is not binding. Several scholars who argue that the Uniting for peace could be a solution in order to overcome the veto power within the Security Council. However, they argue that the resolution is not binding.

The General assembly is responsible to maintain international peace and security in case the Security Council fails to maintain peace and security. According to Hossain the UN Charter imposes primary responsibility for the maintenance of international peace and security upon the Security Council. Then what is left for the General Assembly is rather

---

<sup>268</sup> *Id.* at 19

<sup>269</sup> *Id.*

<sup>270</sup> S.C. Res. 129, 13 U.N. SCOR, Supp. (July-Sept.) 116, U.N. Doc. 8/4083 (1958).

<sup>271</sup> Michael Cowling, The relationship between the Security Council and the General Assembly with particular reference to the ICJ Advisory Opinion in the 'Israeli Wall', 52 <http://heinonline.org/HOL/Print?collection=intyb&handle=hein.intyb/sayrbk0030&id=58>

secondary or subsidiary in this regard.<sup>272</sup> Despite the restricted power given to the General Assembly by the Charter, an extension of the power is found in the resolution adopted during the early cold war period called Uniting for Peace. The issue is the legality of the ‘Uniting for Peace’ resolution.<sup>273</sup> The Charter under Article 2(4) explicitly prohibits any kind of threat of force or use of force against the political independence and the territorial integrity of any state with the exception of self-defense under Article 51.<sup>274</sup> The issue is that can the authorization by the General Assembly to use force be considered as a violation of Article 2(4). In the case of the ‘Uniting for Peace’ resolution, the General Assembly was only playing the role that should be played by the Security Council. As the Security Council is unable to act this responsibility is transferred to the General Assembly. By its authorization in the resolution the General Assembly did not cause any threat or use of force against the territorial integrity or political independence of any state.<sup>275</sup>

The Uniting for peace resolution could be a way to overcome the veto power but the problem is that the resolution is not binding. However, still the Uniting for Peace resolution can have an influence even if this is not always the case as it can push supportive countries to take actions. According to Okhovat “it may seem that there is no preventive measure against the use of veto and limitless power of the permanent members”<sup>276</sup> but he says that this is not the case. During the early phases of Korean War, the USA, concerned by the Soviet Union’s repeated use of veto power and fearing those actions might prevent the Council from protecting South Korea considering that the USSR supported North Korea took the matter to the General Assembly.<sup>277</sup> With support from many countries the UN adopted a General Assembly resolution which is the Uniting for Peace in November 1950. This resolution reaffirms it is important that the Security Council carries out its responsibility in maintaining international peace and security and

---

<sup>272</sup> Kamrul Hossain, *supra* not 187, at 86

<sup>273</sup> *Id.*

<sup>274</sup> Charter of the United Nations, *supra* note 18

<sup>275</sup> Kamrul Hossain, *supra* not 187, at 87

<sup>276</sup> Sahar Okhovat, The United Nations Security Council: Its Veto Power and Its Reform 27( December 2011 ) [http://sydney.edu.au/arts/peace\\_conflict/docs/working\\_papers/UNSC\\_paper.pdf](http://sydney.edu.au/arts/peace_conflict/docs/working_papers/UNSC_paper.pdf)

<sup>277</sup> *Id.*

that the permanent members limit their use of the veto power.<sup>278</sup> This resolution further recognizes that the failure of the Security Council in fulfilling those tasks will not relieve the United Nations of its responsibilities under the Charter to maintain international peace and security.<sup>279</sup> Thus, when the permanent members of the Security Council find that they are at odds and fail to reach unanimity on a matter that appears to be a threat to international peace and security, this resolution authorizes the General Assembly to immediately consider that matter and issue its own appropriate recommendations to the Member States for collective measures. “Those collective measures can include the use of armed force when necessary.”<sup>280</sup> As a result, this resolution gives the GA final responsibility rather than secondary responsibility. Okhovar contends that “it can be held as a way to bypass the Security Council and a means for the General Assembly to overrule the vetoes of the UN Security Council P5 members.”<sup>281</sup>

The Uniting for Peace as I stated could be a way to push countries to take an action. Even though not frequent, this resolution has been applied during the GA’s history. One successful example of its application was in 1981 when South Africa was preventing the independence of Namibia.<sup>282</sup> The General Assembly by using this resolution recommended sanctions against South Africa and assistance including military assistance to those who were fighting for Namibian independence. The resolutions passed by the GA using the provisions of “Uniting for Peace” are not binding (as none of the General Assembly resolutions are).<sup>283</sup> Nevertheless, because of their nature, these resolutions can carry more weight and can press supportive countries to take actions. It was what happened regarding South Africa.<sup>284</sup> As Richard Schifter, the former US Assistant Secretary of State for Human Rights explains, the resolution on South Africa passed under “Uniting for Peace” principles, was a significant step in the process of imposing sanctions on apartheid South Africa and de-legitimizing the country.<sup>285</sup> Therefore,

---

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> General Assembly Res. 377 (A), 3 November (1950).

<sup>281</sup> Sahar Okhovat, *supra* note 276 at 28

<sup>282</sup> General Assembly A/RES/36/51, 24 November 1981

<sup>283</sup> *Id.*

<sup>284</sup> Sahar Okhovat, *supra* note 276 at 27

<sup>285</sup> *Id.*

bypassing the Security Council is not impossible, it can happen through the use of “Uniting for Peace” resolution.<sup>286</sup>

The Uniting for Peace resolution has kind of moral effect as it can be used as a moral pressure to achieve peace and security which is useful. Even if the resolution is not binding but this kind of pressure can at least be a way to try to maintain peace and security. Asamoah evaluate the legal effect of the GA resolutions. He stated that “it is important to distinguish between the binding nature and the legal effect of resolutions of the General Assembly.”<sup>287</sup> Moreover, resolutions may have a legal effect even though they are not considered by states to be binding upon them. Furthermore, the scope of legal effect is wider than that of legally binding. The binding nature of resolutions is only one aspect of the legal effect that can be considered. In this context the legal basis of the particular resolution becomes relevant and the charter provisions on the competence of the General Assembly must be considered. Most essential, is the influence of General Assembly resolutions upon the growth of the rules of international law.<sup>288</sup> He added that:

Apart from their legal effect, resolutions may have other purposes and results. They are generally recognized, for example, as expressions of the moral conscience of mankind and therefore capable of exerting moral pressure. It may not be desirable to depend on moral force alone, but it must be remembered that in the absence of an international enforcement authority, one of the means of insuring obedience to the rules of the international order is the moral reprobation attaching to their infraction.<sup>289</sup>

In sum, moral pressure is only part of the solution but it can not always be a way to achieve peace and security. For that reason Uniting for Peace can not be considered a way to overcome the veto power. It is mandatory that the international community find other solutions. Some scholars think that the uniting for peace resolution is not really a solution to overcome the veto power. They argue that the UN needs reform especially within the Security Council or the general assembly.

---

<sup>286</sup> The United Nations Security Council: Its Veto Power and Its Reform Sahar Okhovat , December 2011

<sup>287</sup> Obed Asamoah, The Legal Effect of Resolutions of the General Assembly 215(1964)<http://heinonline.org/HOL/Print?collection=journals&handle=hein.journals/cjtl3&id=216>

<sup>288</sup> Obed Asamoah *supra* not 287 at 215

<sup>289</sup> *Id.*

According to Voeten, the ‘Uniting for Peace’ could no longer be used effectively. After the early 1960s, when the US and the West lost their majority in the UNGA as the Western powers used the temporary absence of the USSR in 1950 to allow the UNGA authority to take measures to preserve international peace and security if the UNSC were deadlocked. Following that, the UNGA still passed many resolutions related to security, but they were more often ignored and produced few public goods.<sup>290</sup> For example, US President Ronald Reagan famously claimed that the 1983 UNGA resolution condemning the United States for its intervention in Grenada “didn’t upset his breakfast at all”<sup>291</sup> Voeten added that the solution is to reform the UN and he illustrate that by giving previous example such as the case of the transformation of the GATT to WTO. He stated that:

In the past fifteen years, we have witnessed major institutional reforms and innovations in the international arena. The EU broadened, deepened, and moved increasingly towards a supranational decision-making structure. NATO accepted new member states and modernized its military command structure. The international trade system was transformed fundamentally by the replacement of GATT with the World Trade Organization (WTO) and its highly legalized dispute-resolution mechanism. . . The UN Security Council (UNSC) is an important example. What makes the UNSC’s institutional persistence so interesting is that its activities have changed rather dramatically with the Cold War’s ending.<sup>292</sup>

Mehta also thinks that the solution to overcome the veto power should be by reforming the UN. As the General Assembly needs to regain its powers as this will have impact on the resolutions related to R2P concept.<sup>293</sup> The Charter makes it clear that the General Assembly of all member states is the primary UN body. Article 15 says that “the Assembly shall receive and consider annual and special reports from the Security Council...and from the other Organs of the United Nations”.<sup>294</sup> The chief limitation on its powers comes from Article 12 which lies down that when the Security Council is exercising its functions in dealing with matters of peace and security the Assembly

---

<sup>290</sup> Erik Voeten, Why no UN Security Council reform? Lessons for and from institutional theory 296, [http://www9.georgetown.edu/faculty/ev42/index\\_files/Multilateralism\\_and\\_Institutions\\_chapter.pdf](http://www9.georgetown.edu/faculty/ev42/index_files/Multilateralism_and_Institutions_chapter.pdf)

<sup>291</sup> The Spokesman-Review, 101st year, no. 170, November 4 1983, available at <http://news.google.com/newspapers?nid=1314&dat=19831104&id=uDcSAAAIBAJ&sjid=6O4DAAAAIBAJ&pg=5592,2048008>

<sup>292</sup> Erik Voeten, *supra* not 290 at 289

<sup>293</sup> Vijay Mehta, Reforming and strengthening the UN for the 21st Century 4,

<sup>294</sup> Charter of the United Nations, *supra* note 18

refrain from making any recommendations.<sup>295</sup> “While this is a necessary condition it should be modified by a new rule which should be mutually agreed by both institutions.”<sup>296</sup> He added that:

The powers of the General Assembly should be enhanced so that it can play a vital role debating and deciding important international issues. At present, each autumn, it is faced with a daunting agenda. On a positive note, the General Assembly has powers which can be activated for bringing Peace as the Uniting for Peace resolution of 1950 which was used to override the monopoly of Security Council for resolving the war in Suez. However, the resolution is not binding. The UN need to be more transparent and democratic institution.<sup>297</sup>

These points of view show that it is really necessary to overcome the veto power within the Security Council in order to have fair decisions concerning the resolutions related to R2P. The Uniting for Peace resolution could be a solution as all members of the General Assembly could participate in deciding whether or not R2P resolution is necessary. Some others think that as a moral effect Uniting for Peace could have an impact in deciding whether to intervene or not in a state under the concept of R2P. I think that Uniting for Peace may be in some cases a way to achieve a fair decision in deciding whether to intervene or not even if it is not binding.

#### **4- The future of the Uniting for Peace and the concept of R2P**

It is clear from this analysis that according to the UN Charter the General Assembly's resolutions are not binding and that the Uniting for Peace Resolution can only be implemented if the members of the UN really wants to issue a resolution and to intervene under the concept of R2P. The issue is that in our days which witnesses many crises such as the case of Libya<sup>298</sup> or Cote d'Ivoire<sup>299</sup> we really need the UN to authorize resolutions which can save the civilians for crime against humanity or genocide. However, these resolutions should not depend on politics like what it happening currently with Syria. In 2012 the Security Council failed to adapt draft resolution on Syria as a result of Russia

---

<sup>295</sup> *Id.*

<sup>296</sup> Vijay Mehta, *supra* not 293 at 4

<sup>297</sup> *Id.*

<sup>298</sup> United Nations Security Council resolution 1973, SC/10200 ( march 2011)

<sup>299</sup> United Nations Security Council Resolution 1975, S/RES/1975 ( march 2011)

and China's veto.<sup>300</sup> The UN members in order to end this violence went to the General Assembly which issued a resolution that condemns the human violation done by the regime but the GA's resolutions are not binding. The issue is that can the GA uniting for peace resolution be considered a solution for the Syrian crisis. As I mentioned earlier that General Assembly invoke the "Uniting for Peace" resolution (377 A), a measure established to continue the deadlock at the Security Council. The "Uniting for Peace" famously did succeed in 1950. In this case, it served as a way of authorizing "collective measures" including the "use of armed force" during the Korean War, despite consistent Soviet vetoes in the UNSC.<sup>301</sup> As I stated earlier an Emergency Special Session (ESS) of the General Assembly can be called either by a procedural vote in the UNSC or within 24 hours of a majority of General Assembly members requesting one of the UN Secretary-General. Taking this into consideration in the case of Syria if a resolution was passed for Syria similarly authorizing the use of force, this would provide a legal justification for intervention. Weiss stated that:

The main difficulty, of course, would be convincing the majority of the General Assembly members to support it, a contingency that seems remote without strenuous lobbying from the Arab League and the Organization of the Islamic Cooperation (OIC), which has 57 member states drawn from the Muslim-majority and Arab countries.<sup>302</sup>

Finally after all this we can conclude that the Uniting for peace is a way to overcome the P5 power but as it is not binding this will depend on the will of the members to use it. The international community still needs to find a solution to overcome the veto control.

---

<sup>300</sup> Security Council resolution SC/10536, 4 February 2012

<sup>301</sup> General Assembly Res. 377 (A), 3 November (1950).

<sup>302</sup> Michael Weiss Safe Area for Syria 5, (2011) [http://www.foreignpolicy.com/files/fp\\_uploaded\\_documents/111228\\_intervention\\_Syria\\_paper\\_.pdf](http://www.foreignpolicy.com/files/fp_uploaded_documents/111228_intervention_Syria_paper_.pdf)



## **V. Conclusion**

The UN was created in order to maintain peace and security. In order to achieve this goal the concept of responsibility to protect was born after the Rwanda genocide as a way to intervene to protect civilians. The concept of R2P passed through several phases starting from the birth of the idea followed by the feeling of the international community to issue reports in order to clarify the importance of this concept. Then the third phase in which UN issued resolution legalizing R2P. The concept of R2P does not contradict the UN charter. The R2P concept does not change anything it is only a way for the Security Council to enforce its action. In addition, UN Charter recognizes legitimate roles for regional organizations and regional arrangements in Chapter VIII. The general assembly also has a role in maintaining peace and security and in case the Security Council fails to reach its main purpose the General Assembly can do this through the Uniting for Peace resolution. The Uniting for Peace resolution is a way to overcome the veto control and allows the 193 members to have a voice in deciding whether it is necessary to intervene in a country to save its civilians from crimes against humanity, genocide or war crimes or no. However, the Uniting for Peace Resolution is not binding which means that the international community needs to find another solution to overcome the dominance of the P5.